A COMPENDIUM

OF THE

LAWS ON BILLS OF EXCHANGE, PROMISSORY NOTES, CHEQUES, &c.

WATERLOW & SONS LIMITED, LONDON

A COMPENDIUM

OF THE

LAWS ON BILLS OF EXCHANGE, PROMISSORY NOTES, CHEQUES,

And other Commercial Negotiable Instruments

OF

ENGLAND, GERMANY AND FRANCE;

WITH

A TRANSLATION OF THE GERMAN CODE AND REFERENCES TO THE ITALIAN AND SPANISH CODES.

BY

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TO

THE RIGHT HONORABLE LORD O'HAGAN, P.C.

(LATE LORD HIGH CHANCELLOR OF IRELAND),

IN

GRATEFUL ACKNOWLEDGMENT

FOR THE

EMINENT SERVICES RENDERED TO THE CAUSE OF

INTERNATIONAL CIVILIZATION AND JURISPRUDENCE,

AS

PRESIDENT OF THE ASSOCIATION

FOR THE

REFORM AND CODIFICATION OF THE LAW OF NATIONS,

THIS WORK

IS (WITH PERMISSION) INSCRIBED BY

THE AUTHOR.

PREFACE.

In presenting this Compendium on Bills of Exchange and Promissory Notes, including some of the transferable negotiable commercial instruments, to the public, my desire has been to place in the hands of the practitioner and business man, in a compendious form, a summary of the laws of the three great systems, namely: the English, the German and French. For the convenience of reference, I have adopted the arrangement of the German Code on Bills of Exchange, and a translation of the Articles of that Code is given at the head of each corresponding section. No translation of the Code de Commerce has been rendered; but reference to the Articles of Code, and explanatory notes, have been furnished; in most instances the corresponding articles of the Spanish, Italian, and Belgian Codes have also been added.

The recent Law of the three kingdoms of Sweden, Norway and Denmark on Bills of Exchange and Promissory Notes substantially agrees with the German Code; so also that of Finland; the Russian Law in most of its important bearings likewise concurs. To have added references to the laws of all these different States would have unduly encumbered the Notes; sufficient has, it is hoped, been done to guide the reader in his inquiry. For fuller particulars, reference may be made to M. St. Joseph, Prof. Leone Levi, and to Dr. Borchardt, in whose works translations are, in most instances, given of the different Codes and summaries of the systems of Laws of the countries of Europe and Trans-oceanic States.

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TABLE OF CONTENTS.

PAGE

PREFACE.

INTRODUCTION.—*English Law*, historical summary of 1

THE FRENCH LAW, historical account of the use and development of the French system 10

Code, Napoleon 11

The GERMAN LAW, historical epitome and juridicial principles of.. 14

RUSSIAN LAW, general outline of 19

SWEDISH, DANISH LAWS, general outline of 20

United States of America 20

Summary of law of these States 21

General summary and account of the proceedings of the International Commission on Bills of Exchange 25

CHAPTER 1.

OF THE CAPACITY TO CONTRACT 27

Section 1.—Of the capacity to contract by means of a Bill of Exchange or Promissory Note.. 27

N.B.—To each section are added foot notes, giving the English Law, French Law, and the law of other States, the order of arrangement of the German code being followed as the most suitable for reference.

Section 2.—Liabilities contracted by a debtor, by means of a Bill of Exchange or Promissory Note 28

Section 3.—The presence of the name on a Bill of Exchange of a person who is incapable of contracting its effect on the validity of the instrument 28

CHAPTER 2.

THE ESSENTIAL REQUISITES OF A BILL OF EXCHANGE 30

Section 4.—Of the essential requisites; form of a Bill of Exchange 30

Section 5.—Variance between the sum stated on a Bill of Exchange in writing and in figures 32

Section 6.—Where the drawer of a Bill of Exchange is likewise the payee 33

Section 7.—In what cases informality in the form of a Bill of Exchange renders it void or voidable 33

Section 8.—The liability of a drawer of a Bill of Exchange .. 34

b

CHAPTER 3.

PAGE

OF INDORSEMENT 36
Section 9.—Of the essential requisites of indorsement .. 36
Section 10.—Of indorsement, its requisites, and consequences of informality 37
Section 11.—Form and mode of indorsements 37
Section 12.—When an indorsement is deemed valid, when void or voidable 38
Section 13.—Filling up blank indorsements, imperfect indorsements 39
Section 14.—Legal liabilities incurred by indorsing a Bill of Exchange 40
Section 15.—Effect of making a Bill of Exchange unnegotiable 40
Section 16.—Indorsement after due date, rights of parties .. 41
Section 17.—Special indorsement, rights of parties how affected, and consequences on transfer 43

CHAPTER 4.

PRESENTATION FOR ACCEPTANCE 44
Section 18.—Mode of presentment, and effects of 44
Section 19.—Duty of a holder to present a Bill of Exchange for acceptance, consequences in case of default 45
Section 20.—Duty of holder to establish date of presentment 45

CHAPTER 5.

OF THE ACCEPTANCE OF A BILL OF EXCHANGE 47
Section 21.—Acceptance how made, form and requisites of .. 47
Section 22.—Of limited, restricted or conditional acceptance.. 48
Section 23.—Legal responsibilities incurred by accepting a Bill of Exchange 49
Section 24.—Where a Bill is made payable at a place not being the domicile of the acceptor 50

CHAPTER 6.

OF NON-ACCEPTANCE 52
Section 25.—Consequences arising out of dishonour for non-acceptance 52
Section 26.—Consequences to the drawee and other parties by dishonour for acceptance of a Bill of Exchange 53
Section 27.—The foreign law in cases where security has been lodged in consequence of dishonour for non-acceptance .. 54
Section 28.—As to when, according to the laws of Foreign States, security has to be lodged; and when and how it may be liberated.. 54
Section 29.—Effect and consequences of the insolvency or bankruptcy of the acceptor 54

CHAPTER 7.

PAGE

OF THE DUE DATE OF A BILL OF EXCHANGE 56

Section 30.—Mode of determining a due date where uncertainty prevails 56

Section 31.—Time of presentment of a Bill of Exchange drawn at sight, or a given number of days after sight .. 57

Section 32.—Due date of a Bill of Exchange drawn at a given number of days after sight 57

Section 33.—Days of grace 59

Section 34.—Date bills, old style and new style 59

Section 35.—Bills drawn from fair time to fair time .. 60

Section 36.—Legal position of an indorsee, on a Bill of Exchange 60

Section 37.—Payment in foreign currency 61

Section 38.—Part payment of the nominal sum of a Bill of Exchange, legal effect of 62

Section 39.—The person liable on a Bill of Exchange, his right on payment to have the same delivered up to him .. 63

Section 40.—The law of foreign States as regards depositing amount of a Bill of Exchange in court 64

CHAPTER 8.

RECOURSE ON A BILL OF EXCHANGE.. 65

Section 41.—Requisites to be observed to entitle a holder to his remedy against the drawer and prior indorser or indorsers 65

Section 42.—Consequences of a request or direction not to note or protest 66

Section 43.—Where the place of payment is stated on the Bill, legal obligation to present it at such place 67

Section 44.—As regards the acceptor of a Bill, when protest or noting deemed necessary 68

Section 45.—Notice when to be given to the other parties on a Bill of Exchange 69

Section 46.—What constitutes evidence or proof of notice .. 71

Section 47.—Where the address of the drawer or of an indorser is unknown as to mode of giving notice .. 71

Section 48.—Rights of holder to claim the amount of the Bill and the expenses incurred for noting protest, etc. .. 72

Section 49.—Right of election of holder as against drawer and prior indorsers 72

Section 50.—Rights of recourse of holder (foreign law) after noting or protest 73

Section 51.—Rights of election of the holder of a Bill of Exchange against one or more of the antecedent parties .. 75

Section 52.—Rights of a holder of a Bill of Exchange to claim re-exchange 76

Section 53.—Rights of holder for reimbursement of expenses.. 77

Section 54.—Rights of person paying a Bill to claim a statement of account of expenses 77

Section 55.—Right of indorsee who has satisfied antecedent parties to cancel indorsement 78

CHAPTER 9.

PAGE

Of Intervention 79

Section 56.—Acceptance for honour, intervention, duties of holder to apply to the in-case-of-need address 79

Section 57.—Right of holder of a Bill of Exchange to refuse acceptance of party named as an in-case-of-need address .. 80

Section 58.—Duties of acceptor for honour, his liability to give notice to antecedent party or parties 80

Section 59.—Mode of determining for whose account acceptance for honour is made 82

Section 60.—The rights and liabilities of an acceptor for honour 82

Section 61.—The law of foreign States requiring security, even where acceptance for honour has been made 83

Section 62.—Payment for honour (by intervention), period in which a bill has to be presented 84

Section 63.—Rights acquired by a person paying a Bill of Exchange for honour 85

Section 64.—The rule, where several persons intervene, as to who has the preference to accept or pay for honour .. 85

Section 65.—Rights of holder and acceptor, or person paying a Bill of Exchange upon protest, to recover expenses incurred 86

CHAPTER 10.

Duplicate Counterparts 88

Section 66.—Circumstances under which the drawer of a Bill of Exchange is obliged to furnish duplicate counterparts .. 88

Section 67.—Liability of an acceptor or endorser of a bill on more than one part or duplicate 89

Section 68.—Rule as to marking on a duplicate or counterpart that it is a counterpart 90

Section 69.—Rights of the holder of an indorsed duplicate of a Bill of Exchange 91

Section 70.—Law regulating rights of holder of a copy of a Bill of Exchange 92

Section 71.—Liability of an endorser of a copy of a bill .. 93

Section 72.—Liability and duties of a depositor of an original bill as against the holder of a counterpart or copy .. 93

CHAPTER 11.

Of the Loss of a Bill of Exchange and its Consequences .. 95

Section 73.—Rights of holder of a lost or stolen Bill of Exchange; his right to claim payment 95

Section 74.—Rights of a *bonâ fide* holder to claim delivery up to him of a Bill of Exchange 96

CHAPTER 12.

Forgery: fraudulent Alteration of a Bill 98

Section 75.—Effects of forgery or alteration of a Bill of Exchange on parties to the instrument 98

PAGE

Section 76.—Liability of drawer and endorser in case of a forged Bill of Exchange 99

CHAPTER 13.

LIMITATION OF ACTION, PRESCRIPTION 101
Section 77.—The period of prescription as regards the acceptor of a Bill of Exchange 101
Section 78.—Period of prescription as against the holder in regard to the drawer and antecedent parties to a Bill of Exchange 101
Section 79.—Period of prescription; limitation of action; right of recourse of the indorser of a Bill of Exchange as against the drawer and antecedent parties 103
Section 80.—Period of limitation of action when it ceases to run 104

CHAPTER 14.

THE LIABILITY INCURRED UNDER A BILL OF EXCHANGE BY A DRAWER, ACCEPTOR, AND INDORSER 105
Section 81.—Parties liable on a Bill of Exchange 105
Section 82.—Defences to an action on a Bill of Exchange .. 107
Section 83.—Liability of drawer and acceptor of a Bill of Exchange 108
Section 84.—The law regarding Bills of Exchange drawn or accepted in a foreign country 108
Section 85.—Requisites of a foreign bill, the necessary characteristics; the mode of proceeding on it 110
Section 86.—Acts to be observed for the preservation of the rights of a holder of a Bill of Exchange in a foreign country 111

CHAPTER 15.

OF PROTESTS 113
Section 87.—By whom protest is to be made, and form of protest 113
Section 88.—Form of protest; rules to be observed in making protest 113
Section 89.—Rule, where there are several parties to a Bill of Exchange, as to making one or more protests 115
Section 90.—Duties of a notary or officer of a court, and rules to be observed by him 115

CHAPTER 16.

PRESENTATION FOR PAYMENT 117
Section 91.—Time and place of presentation of a Bill of Exchange 117
Section 92.—Where the due date of a bill falls on a Sunday or public holiday, rules to be observed 118
Section 93.—Rules to be observed in determining the due date of a Bill of Exchange 119

CHAPTER 17.

PAGE

THE SIGNATURES TO A BILL 120
Section 94.—Imperfect signatures; rule as to signing a Bill of Exchange by a mark or in pencil 120
Section 95.—Liability of an agent who signs any declaratory act regarding a Bill of Exchange in excess of his authority 121

CHAPTER 18.

PROMISSORY NOTES 123
Section 96.—The form and essential requisites of a Promissory Note 123
Section 97.—Place of payment where none stated on a Promissory Note 124
Section 98.—Exceptions to the rule that the laws regarding a Bill of Exchange also apply to a Promissory Note .. 125
Section 99.—Place where a Promissory Note must be presented for payment.. 127
Section 100.—Prescription; limitation of action 128
Section 101.—Cheques, their legal character and requisites as to form 128

CHAPTER 19.

MANDATES, BILLS OF LADING, DELIVERY NOTES, AND OTHER NEGOTIABLE COMMERCIAL DOCUMENTS WHICH PASS BY DELIVERY OR INDORSEMENT 131
Section 102.—Mandates, letters of advice, letters of credit .. 131
Section 103.—Letters of advice for money payments, delivery of goods 132
Section 104.—Bills of lading, shippers' notes, delivery orders for goods 133
Section 105.—Letters of credit, indorsement of mandates, bills of lading, delivery orders, &c. 136
Section 106.—Instruments which may be indorsed or assigned; legal effects of assignment 136
Section 107.—Form of indorsement, legal effect of, and its analogous nature to that on a Bill of Exchange 137
APPENDIX. 138

TABLE OF CASES.

	PAGE
Alexander *v.* Tizer	121
Anstiss *v.* Bunyard	129
Agra and Masterman Bank *v.* Asiatic Bank Corporation	131
Barton *v.* Bishop	27
Brewer *v.* Widmaier.. ..	36
Burrough *v.* Moss	42
Bonar *v.* Mitchell	44
Bartlett *v* Bendon	61
Brown *v.* McDermont ..	68
Baldwin *v.* Richardson ..	71
Bacon *v.* Searles	76
Borough *v.* Perkins	113
Brinsmead *v.* Harrison ..	123
Bull *v.* Sullivan	129
Carton *v.* Kenealy	31
Clerk *v.* Piggott	39
Cox *v.* Troy	47
Campbell *v.* French.. ..	56
Comes *v.* Taylor	63
Chapcott *v.* Curleries ..	71
Carnes *v.* Taylor	72
Critchlow *v.* Parry	99
Cooper *v.* The Earl of Waldegrave	110
Collen *v.* Wright	121
Camidge *v.* Allenby ..	125
Christie *v.* Fousick	128
De la Courtier *v.* Bellamy ..	31
Davis *v.* Clarke	32
Davidson *v.* Robertson ..	89, 90
Down *v.* Hatting	97
Baxendale *v.* Bennett ..	97
De la Chaumette *v.* the Bank of England..	124
Denton *v.* The Great North. Railway Co.	133
Dixon *v.* Bovill	135
Emery *v.* Day	103
Esdaile *v.* Sowerby	117
Fitch *v.* Jones	7
Field *v.* Carr..	61
Florence *v.* Jennings ..	74
Falk *v.* Fletcher	134
Goodwin *v.* Robarts.. ..	7
Gray *v.* Milner	31
Gale *v.* Walsh	44
Gladwell *v.* Turner	70
Geill *v.* Jeremy Moo & M..	70
Gower *v.* Clay	95
Gill *v.* Cubitt..	97
George *v.* Surrey	120
Gay *v.* Lander	124
Garden *v.* Bruce	128
Hendaugh *v.* Blakey ..	48
Halstead *v.* Skelton ..	59
Hansard *v.* Robinson ..	63
Hoare *v.* Cazenove	82
Holdsworth *v.* Hunter ..	90
Hodgson *v.* Murray	96
Hemp *v.* Garland	101
Holmes *v.* Herrison	101
Holloway *v.* Russell.. ..	121
Haille *v.* Smith	134
Henderson *v.* Comptoir d' Escompte	134
Harman *v.* Anderson ..	134
Johnson *v.* Gallagher ..	27
Jones *v.* Broadhurst.. ..	76
Johnson *v.* Kennion ..	76
Jeffery *v.* Walton	31
King *v.* Hoare	123
King *v.* Zimmerman ..	136
Lazarus *v.* Corrie	42

PAGE
Legge v. Thorpe 67
Lowndes v. Collins 74
Lovell v. Martin 97
Leadbitter v. Farrow .. 121
Lewis v. Nicholson 121
Lucas v. Dorien 134
Lloyd v. Fleming 135

Mullick v. Peadakisen ..45, 46
Mellish v. Rawdon 45, 46
Moo v. Rob 71
Mellish v. Simeon 74
Mutford v. Walcott 80
Mertens v. Winnington .. 85
Morris v. Bethell 98
Macgregor v. Rhodes .. 99
Milne v. Graham 124
Mohawk Bank v. Broderick 125
Marzetti v. Williams .. 129
Madger v. Comptoir d'Escompte de Paris 134
McEwan v. Smith 135
Marshall v. Wilson 135

Orr v. Union Bank 132

Prestwich v. Marshall .. 27
Plimley v. Wesley 36
Parker v. Gordon .. 46, 57
Phillips v. Im-Thurm .. 49
Porthouse v. Parker 72
Pillan v. Van Nicrof .. 80
Price v. Price 95
Poole v, Smith 95
Price v. Neal.. 98
Phillips v. Im-Thurm .. 98
Pucklington v. Sylvester .. 129

Reynolds v. Doyle 50
Rowe v. Young 68
Rex v. Johnson 71
Randall v. Moon 76
Ralli v. Dennistown .. 91, 92
Reynolds v. Peto 124

PAGE
Russell v. Wiggin 133
Renteria v. Ruding 134

Summers v. City Bank .. 27
Storm v. Stirling .. 31, 123
Saunderson v. Piper.. .. 32
Sturtevant v. Ford 42
Sproat v. Matthews 47
Sturdy v. Henderson .. 56
Searles v. Sadgrove 63
Solaste v. Palmer 65
Smith v. Mallett 70
Suse v. Pompe .. 75, 77
Straker v. Graham 88
Smithy v. Chester 98
Smith v. Johnson 121
Selly v. Eden 125
Spear v. Travers 134

Tindal v. Brown 57
Turner v. Samson 66

Veal v. Veal 7
Van Diemen's Bank v. Victoria Bank 48
Vandewall v. Tyrrell 52, 84
Van der Donkt v. Thelluson 125

Walker v. M'Donald .. 39
Wegerstoff v. Herne .. 47
Williams v. Smith 70
Woodcock v. Houldsworth .. 71
Walter v. Haynes 71
Wittersheim v. Lady Carlisle 101
Whitehead v. Walker .. 103
Webster v. Kirk 103
Wallace v. McConnell .. 125
Warlow v. Harrison.. .. 133
Wilson v. Hart 134

Yates v. Nash 31
Yates v. Hoppe 50

Zwinger v. Samuda 134

INTRODUCTION.

NEARLY all the great authorities concur that the introduction of negotiable instruments is of modern date. Heinnecius* attributes the origin of this most useful mode of transfer of property—of liquid sums of money—to the inventive genius of the traders of Italy of the 14th and 15th centuries—to the merchants of Genoa and Venice. The theory which lends to a Bill of Exchange undue antiquity is repudiated by this author and those who came after him. Cicero,† it appears, refers to a mandate, directed by one person to another person residing in a different locality to pay a sum of money; and the Pandects ‡ allude to a similar instrument. But the document mentioned by these authorities is as dissimilar to a modern Bill of Exchange, as the mandate mentioned in Scripture, § or in the holy writings of India.‖

Early in the 13th century traces of the use of negotiable instruments may, however, be discovered. The Statute Book of our English kings, the Rolls of Parliament of

* Heinnecius, Jur. Camb., cap. i., secs. 6 & 7.
† Cicero, Epist. ad Att. XII., 24, XV.
‡ Digest, lib. 13, tit. 4, l. 7 & 1.
§ Exodus, bk. 36.
‖ M. Boucher names, that Lezon de Flaix affirmed that a Bill of Exchange was known and in use in India in remotest antiquity.

the reign of Richard II., mention a Bill of Exchange (A.D. 1379, 3 Richard II., c. 3); but not until the reign of James I. had these instruments acquired such importance as to enable us to trace them in any reported case; the first case cited being that of Martin *v.* Boure, Cro. Jac. 6.

The paucity of information compels us hence to revert to the Italian as the originator of negotiable instruments. In Italy, during the 14th century, Bills of Exchange had come into common use. The vast trade of Venice, of Genoa and other cities of that trading country could not, indeed, have been carried on but by the means of these useful instruments of transfer of moneys.* Pothier, who upholds the opinion of Heinnecius in this respect, adopts this view, and attributes to the Italian the credit of having invented and perfected negotiable paper, though Boucher inclines to think that the *Consulat de la Mer, I.*, is the earliest authentic record extant † of these instruments. Antiquarian research as to the origin of Bills is, however, beyond our limits in the rapid survey of the historical ground we have to sketch out. Beyond question, in Italy Bills of Exchange first came into common use. Scaccia, in his treatise on *Litteræ Cambii*, says, "*Litteræ Cambii dicuntur ex eo quod cambitur pecunia pro literis;*" and he refers with some feeling of satisfaction to the early introduction of Bills in Italy as evidence of the advanced state of civilization in his native country.

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* Weber, in his elaborate work, entitled "Richerche sull' Origine e sulla natura del Contrato di Cambio" (1810), states that as early as the year 1171 these documents were in use in Venice. A.D. 1272, a law of Venice defined a Bill of Exchange. The Ordinance of Barcelona (Consulat de la Mer, i. 614, 620, Boucher) is mentioned by Kent (V. ii., p. 73, 12th Ed.) as the earliest authentic record of a Bill of Exchange.

† The Ordinance of Barcelona (Consulat de la Mer, i. pp. 614, 620, by Boucher).

The merchants of France were not slow in adopting these instruments; indeed, their first introduction must have been at a very early date, for we find a statute was passed at Marseilles, dated A.D. 1273, regulating the use of Bills. Two centuries later, A.D. 1462, Louis XI. of France, in view of the expanding trade of his kingdom, promulgated an *Ordonnance* permitting the employment of Bills for the transfer of moneys between France and other countries, save England, with which country the relations in those days were far from friendly. After a lapse of two centuries, Louis XIV. published his celebrated *Ordonnance de Commerce*, A.D. 1673.* The section on "*Contrat de Change*" will be found to be most complete; it served, in fact, as the basis for that part of the Code Napoléon which deals with *lettres de change*,† and of which mention will be made further on.

The statute of Richard II. already referred to, which makes mention of "*letteres d'eschange*," was the first of a long series of statutes of which mention has now to be made. After a pause of centuries the pressure of commercial need necessitated further legislative aid. First we have to notice the 9 and 10 William III., c. 17, entitled, "An Act for the better payment of Inland Bills of Exchange," followed by the well-known statute of the 3 & 4 Anne, c. 9, under which the rights and remedies enjoyed by a holder of a Bill of Exchange were extended to a holder of a Promissory Note. Following the ordinary course of our systematically tardy legislation, we come upon the 17 George III., c. 30, which Act prohibited the issue of notes under 20s., followed by the 48 George III., c. 88 [repealed by the 26 & 27 Vict., c. 105]; then the statute to regulate the acceptance of Bills

* Biener, Wechselrecht, p. 156 *et seq.*
† Code de Commerce, Arts. 111 & 189.

of Exchange, namely, that of the 1 & 2 George IV. Further on we find an Act relating to Bills and Notes falling due on Good Friday or Christmas Day—the 9 George IV., c. 23; and that of the 9 George IV., c. 65, respecting stamps and issue of notes under £5 in England and Scotland. Step by step, as the complaints of the trading community attracted the attention of Government, Acts of Parliament were passed. Thus during the short reign of William IV. we have 4 Bills passed by Parliament, namely, the 2 & 3 William IV., c. 78, regulating the protesting of a Bill not payable at the residence of the drawer; the 3 & 4 William IV., c. 78, granting certain privileges to the Governor of the Bank of England; the 5 & 6 William IV., c. 41, as to certain illegal considerations; an Act regulating the day for presentment in cases of acceptance *supra* protest (6 & 7 William IV., c. 58). The present reign has been equally fruitful in attempts to amend the law. Passing over the enactment in regard to the privileges enjoyed by the Bank of England, the Act of 18 & 19 Vict., c. 67, has first to be mentioned. This statute gives to a *bonâ fide* holder of a dishonoured Bill or Note a summary remedy, compelling the acceptor and other parties liable to satisfy the Court that he or they have a good defence, before leave to enter an appearance is granted. This statute was passed in the year 1855, and it is a matter of surprise that, in a great commercial country like England, frivolous and vexatious litigation should not have been sooner discountenanced. The Mercantile Amendment Act of 1856, clause 6, has rendered acceptance in writing on the face of a Bill, inland as well as foreign, compulsory. Doubts having arisen as to recovery on a lost Bill or Note, the 17 & 18 Vict., c. 125, was passed, to afford relief to a holder seeking to enforce his remedy. Whilst these changes were taking

place, bankers' cheques, which for a long time had been in common use, attracted the attention of the legislature. To remedy certain defects regarding these, the 19 & 20 Vict., c. 25, and the 21 & 22 Vict., c. 79, were enacted. No sooner had joint-stock companies stepped into existence under the general protection of that singularly ill-drawn Act, the Companies Act of 1862, than it was discovered that a company could not contract without using its seal. To remedy this omission a sweeping enactment was passed, the 30 & 31 Vict., c. 131 (1867), giving a company unlimited power to contract by an instrument in writing.

The Bankruptcy Act, 1869, contains several provisions regarding the rights of a trustee under a Bill of Exchange or Note forming part of the estate of a bankrupt. The 33 & 34 Vict., c. 93 (9th August, 1870),—the Married Woman's Property Act, 1870—allows a married woman a right of recovery for any property declared by that Act to be her property, including *Notes and Bills*. This Act has been amended by the 37 & 38 Vict., c. 50. The Infants' Relief Act, 1874, the 37 & 38 Vict., c. 62, is another instance of our tardy and unsystematic legislation; the latest statutes being those regarding crossed cheques (Act of 1876), which regulates the transfer of a crossed cheque; and the 41 & 42 Vict., c. 13, respecting acceptance by signature only.

We have thus far passed in review the numerous enactments which serve as mile-posts of time as we travel onwards to the present day. It is now time to ascertain what the Common Law has done. Contemporaneously with these enactments we find our Courts of Law engaged in ascertaining the law, or framing new rules to meet the exigencies of each particular case. The strong common sense of our judges appears to have grappled with this difficult task, and finally judge-made law has

sprung up, which compasses, although, it is true, in a most unwieldy form, the whole range of rules to be traced in the Code de Commerce, or in a modified shape in the Belgian and contained in the German Codes. Chitty* mentions in his Introduction, 8th edition, that those rules are contained in 2,000 reported cases. Since that date, the 11th edition of Chitty (1878), by John Russell, actually gives upwards of 2,900 cases cited in the text. The task of readily understanding the law, and applying it when understood, is one of no ordinary difficulty; indeed, but for the aid of text-writers this would be simply impossible.

The earliest English writer on this subject was, as far as can be traced, Malynes, who dedicated his treatise, entitled *Lex Mercatoria*, to King James I. In these days a Promissory Note was but little known: thus it has happened that Malynes principally speaks of Bills of Exchange. In 1751 Marius published a short treatise on the same subject, followed shortly afterwards by Beawes' treatise, bearing the title of *Lex Mercatoria Rediviva*. Towards the close of the 18th century, however, men began to feel the need of the better comprehension of this important question. In the year 1789 Bayley published a small work on the "Negotiability of Bills and Notes;" and in the year 1799 the first edition of Chitty on Bills of Exchange appeared, which treatise was destined not only to go through numerous editions, but to materially assist in developing the law by aiding in teaching its right comprehension. In America, where, more especially in the Northern States of the Union, the law is the same in all its material points as in England, several writers of distinction devoted themselves to the task of elucidating the law of Bills and Notes. Here we must first mention J. Story on Bills of Exchange, and the same author on

* Chitty on Bills of Exchange (1878 Ed.).

Promissory Notes (1843), Kyd on Bills (3rd ed.), Kent's Comm., Vol. IV.

Having thus far traced an historical sketch of the origin of Bills of Exchange, we will now proceed to give the leading features of the law of England in regard to these instruments. The fundamental notion of the English Common Law was, that a Bill of Exchange is a transferable *chose in action*.* In direct opposition to this rule, merchants insisted on making these assignments negotiable, until, with tardy reluctance, the Courts yielded the point and adopted the custom † of merchants. This obstacle surmounted, another difficulty as to the consideration arose, until finally our Courts decided that, until the contrary was shown, consideration ought to be presumed.‡ It is this rule, in fact, which distinguishes a contract under a Bill of Exchange, according to the law of England, from all other agreements. Once that the point was yielded that a Bill of Exchange was deemed to be a chose in action, it is quite clear that it cannot be held to be a chattel, though for some purposes the Courts have maintained that the piece of paper on which a Bill was written was a *thing*, and passed, even though not indorsed, to a *bonâ fide* holder.§ Thus, where a Bill or Note has passed to a Trustee in Bankruptcy, as being under the order and disposition of a bankrupt, he, the Trustee, may sue on it, or it may be seized by the sheriff and sold. Gradually, it will be observed, the law clothed these instruments with special privileges, irrespective of any rigidly-to-be-observed form.

* Chitty, 11th Ed., p. 3. The Judicature Act, 1873, has greatly modified the rule as to the assignability of a chose in action.

† Robarts *v.* Goodwin, L. R., 1 App. Cas. 476. The admirable *résumé* of Mr. Jos. Brown, Q.C., on negotiable instruments in this leading case ought to be studied with care.

‡ Fitch *v.* Jones, 24 L. J., Q. B., 295.

§ Veal *v.* Veal, 29 Lan. J. Chorn., p. 321.

For instance, a Bill of Exchange or Promissory Note need not necessarily state the date when it was drawn or made, nor the place of payment; even the direction to pay to order need not be expressed. All the English law requires is, that a distinct promise to pay an ascertainable sum on an ascertainable date should appear, the capacity to contract by means of a Bill running parallel to the right generally of making an agreement. No words importing consideration need be stated on the instrument itself.

As regards indorsements, they may be made in almost any form; they may be to order, in blank, or qualified. After a long struggle, in which the legislature finally interposed (3 & 4 Anne, 9), the rule laid down by Lord Holt was set aside, and the negotiability of a Promissory Note acknowledged. This negotiability is now held to be absolute, unless vitiated by notice or fraud, the sum stated on the Bill passing absolutely to a *bonâ fide* holder. After an equally severe struggle, the acceptance on both inland and foreign Bills was required to be in writing on the instrument itself. Notice of dishonour in lieu of protest, save in the case of foreign Bills, being the law. As regards the parties to a Bill, the acceptor is deemed to be the principal debtor; all other parties, in their relative positions, are only regarded as sureties; prior parties being, nevertheless, the principal debtors, as against the holder, who has his right of election in pursuing his remedy for recovery on the Bill against one or more of the antecedent parties.

The brief summary thus furnished is only intended to indicate the salient points which characterise the English law; in its details other points have to be noticed which will be found in the cases cited in the foot notes of the text, or may be gathered from the text-books referred to. The intrinsic merit of our system is beyond doubt; but,

unfortunately, it so happens that in the different parts of the United Kingdom the greatest divergences exist. Thus the law of Scotland materially differs from that in force in England; the law of Ireland, though subject to most of our legislative amendments, in many respects shows divergences. In our Colonies, as might be expected, the greatest variety of law may be found. Tied together by one common interest, by trade and family relationship, it has proved to be most inconvenient to have to contend with conflicting laws in matters of every-day business life.

In the year 1853 a Royal Commission was appointed to inquire into the question of establishing a uniformity in the commercial Law for the United Kingdom. A report of the Commission was submitted to Parliament. The effort made in 1853 has not, it is to be regretted, been followed up, neither in the United Kingdom nor in our vast and wide-spread Colonial empire. In most of our Colonies and plantations,—these include our Indian Empire, the Australian Colonies, the North American Colonies, West Indies, &c.,—the law of England has been adopted, subject, of course, to modifications.*

Our Colonial empire covers a vast area (8,982,000 sq. miles), peopled by upwards of 250 millions of inhabitants. In some of these Colonies, such as the Cape of Good Hope, Ceylon, British Guiana, Natal, the Roman-Dutch law prevails, which in many respects differs widely from that of England. In Trinidad the old Spanish law is still in force; and in Lower Canada the Civil Code (1867), principally founded upon the Code Napoléon, governs; prior to that year the Customs of Paris were recognised (in part embodied in the

* 19 & 20 Vict., c. 97, and 19 & 20 Vict., c. 60, declare all Bills drawn or made in one part of the United Kingdom and payable in another part to be Inland Bills.—Report of Select Committee on Bills of Exchange, 1854–1855, vol. 7.

Law of 1867). In the Island of Mauritius—ceded 1814—the Code de Commerce prevails; likewise so in Malta. It would carry us, however, far beyond the limits of our introductory remarks, even to make mention of some of the more salient points of conflict which characterise the differences of these various laws; the student being referred for further information on this subject to Text Books.*

Next in importance to our system of Commercial Law, which necessarily includes Bills of Exchange, is that of France, the Code Napoléon. The Code de Commerce rules supreme over the vast area of eight and a half millions of square miles, peopled by 234,000,000 of inhabitants.†

Mention has already been made of the *Ordonnance de Commerce* of Louis XIV. (1673), and its embodiment, with modifications, in the Code de Commerce. It now becomes of interest to pursue the inquiry regarding the historical origin of Bills in France. With characteristic quickness the notion of the Italian merchant was adopted and put to practical use by the French trader. Dupuis de la Serra, the well-known French writer, first suggested the theory of a *pactum de cambiando* (A.D. 1693),‡ which theory Pothier further developed into his *contrat de change.*§

* The works on this question by French jurists which may be consulted are:—Dupuis de la Serra, L'Art des Lettres de Change (1693); Pothier, Traité du Contrat de Change (1772); Persil, De la Lettre de Change (1837); Pardessus, Traité du Contrat de Change (1809); Frémery, Etudes sur les Lettres de Change (1833); Nougier, Des Lettres de Change et des Effets de Commerce (1839) (a later edition, 1877, has been published in Paris); Hoechster, E. G., Manuel de Droit Commercial (1874); De Folleville, Titres au Porteur, (Paris, 1875); Burge, Common Colonial and Foreign Law, 1838; A. de St. Joseph, Concordance, Codes Civils étrangers, et le Code Napoléon (2nd Ed., 1856).

† Dr. Borchardt gives the following countries as included in this area:—Belgium, Egypt, Greece, Hayti, Italy, Netherlands and its colonies, Lower Canada, Mauritius, Malta, Russian Poland, Spain, Portugal, and their Colonies, South America, and several of the Cantons of Switzerland.

‡ Depuis de la Serra (1693), L'Art des Lettres de Change.

§ Pothier, Traité de Change (1763); Savary, Parfait Negociant, 3rd ch., p. 181, refers to the rules of exchange at Lyons (1667) and the decisions of the Commercial Court of Paris (1664).

This notion of a contract permeates the French system in relation to Bills of Exchange. The Commission under Napoléon I. which met A.D. 1801, agreed to a draft of a Code on Commercial Law (published 1803), adopting the views of Pothier, that is, that a Contract had been created (*contrat de change*).* In the year 1817 a supplemental law was passed; further amendments being enacted (subsequently that of the 23rd March, 1848, and of the 3rd May, 1862). Except the few changes thus effected, the law as to Bills and Promissory Notes has remained unchanged. As, however, trade extended and the intercourse with other states increased, the restrictiveness of the law was felt to be very oppressive. The Courts of Law of France, it is true, have for many years endeavoured to aid the requirements of commerce by importing into the interpretation of several of the articles of the Code de Commerce a strained and perhaps an artificial meaning;† but the relief thus afforded was only partial, and failed to satisfy the requirements of commerce.

Having thus far traced the history of the law in France, it now becomes necessary to examine the Code itself.

As already mentioned, the notion of a *pactum de cambiando* permeates the French law, and displaced the older idea of the *emptio-venditio* of the Civil Law. The contract of exchange, it was conceived, could only be perfected by delivery of the instrument itself. To avoid the many difficulties which the adoption of this theory presented, Pothier, to whose mind the danger was evidently present, laid down the rule of a *nominative indorsement*, the words "to order" being required to be expressed, as also the consideration. Pardessus very tersely gives the definition, as understood by French jurists.

* The Code de Commerce came into force 1st Jan., 1808.—Locré, Legislation, vol. xviii., pp. 96, 113.

thus :—he says, * "that a Bill of Exchange is a contract by virtue of which one of the parties contracting agrees to pay to the other party, at a given place, a certain sum of money, which the party contracting has received." Ingeniously as the definition is put, the old notion of a purchase of a sum of money lying at one place, the money being deposited at another place, may be traced in every word thus stated by Pardessus. The Code de Commerce† requires (1) that a Bill shall be dated; (2) that the sum payable shall be stated; (3) that there shall be a drawer, (4) a drawee, and (5) an indorsee, all of whom must be named on the Bill and on the indorsements; (6) that the word *valeur* shall be expressed on the Bill, that is, *la provision couverture*;—the consideration must be named, the mere statement, *valeur reçue*, will not suffice; ‡ that a Bill be drawn at one place upon a person residing at another place.§

The rigidity of the rule regulating the form of a Bill of Exchange points to a principle involved. A Bill is, in fact, according to the French law, only *une cession de créance*—an assignment of a chose in action. Hence an indorsement in blank has a validity given to it by a forced construction of the 138th Art. of the Code; a mandate being imported. Bills to bearer are deemed absolutely void for want of privity. Mere delivery of a Bill does

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* Pardessus, Traité I., p. 13, No. 15; Code de Commerce, Art. 110.

† Code de Commerce, Arts. 110, c. 114, de la forme de la lettre de change; Art. 11, c. 117, de la provision; Art. 137, endossement regulier; 136, de l'endossement; Art. 135, délais des graces; Art. 115, c. 117, de la provision.

‡ M. Hoechster, Manuel de Droit Commercial, p. 442, in referring to the 116 Art., points out the many difficulties which arise in determining to whom *la provision* belongs, where rights collide; or where bankruptcy intervenes, before acceptance, but after notice; or where acceptance has been made, and several claims are put forward.

§ This rule has been greatly relaxed.

not complete title; a holder being, nevertheless, compelled to prove the identity of prior parties. As regards the legal consequences of acceptance, the Code de Commerce * concurs, to a great extent, with the German Code and the English law; an accepter, by virtue of his contract, becomes *in solidum* liable for the sum expressed to be payable on the face of a Bill. The *solidarité*, or liability as co-principal debtors, arises in favour of a holder against all the antecedent parties to the instrument.† The rule of the German law, that dishonour for non-acceptance entitles a holder to demand security, is likewise provided for by the Code.‡

The effect of protest as distinguished from notice, and the necessity of pursuit of remedy, characterise the Code.§ A holder who desires to avail himself of his rights as against his transferor must give notice and proceed against him within fifteen days from the date of protest, a further time being allowed according to distance.‖ Protest and pursuit of remedy against a prior party take thus, according to the Code, the place of notice known to the Law of England; ¶ no act of the holder of a Bill can exempt him from loss of rights, should he fail to comply with these requirements. The rule compelling protest to be made is peremptory (Art. 175), the only exception being in the case of a lost Bill; where this happens (Art. 151), the rule of giving security applies. A Promissory Note, *le billet à l'ordre*, is regulated by the same laws that

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* Code de Commerce, Art. 118 *et seq.*: De l'acceptation. The form of acceptance is regulated by the 122nd Art.

† *Ibid.*, Art. 140.

‡ *Ibid.*, Art. 120.

§ *Ibid.*, Art. 165.

‖ *Ibid.*, Art. 166 & 168.

¶ Hoechster, Manuel du Droit Commercial, p. 4; Lettre de Change, p. 475, 565; Oudin, Léonel, Le Code de Commerce, p. 116.

control Bills of Exchange (Arts. 187, 188) Fi: finally, the time of prescription is limited to five years (Art. 189).

In the year 1865 (14th July) cheques received legislative sanction in France. In all its essential features, the law of 1865 resembles that of England. *La Loi* of the 20th February, 1874, added other provisions, which have extended the usefulness of these instruments.

It will be observed, from what has been stated, that the difficulty of the French system arises out of the endeavour to make an instrument negotiable, whilst adhering to the notion of an assignment of a chose in action, with all the equities which necessarily attach to this form of transfer of property. The rigidity of the rule as to the exact form of the document, and the words to be employed in drawing, accepting, or indorsing a Bill, as prescribed by the Code, has, indeed, greatly impaired its commercial usefulness. The rules regulating the indorsement of a Bill have been made to apply to Bills of Lading, Policies of Insurance, and similar documents, frequently entailing on a *bonâ fide* holder unacquainted with the imperious rigidity of the Code serious, if not fatal, consequences.

Having thus far passed in review the law of England and of France, the third system, namely, the German law, has to be considered. With tardy step the German trader followed in the footsteps of his neighbours, the Italians and French. The first trace of the use of Bills of Exchange in Germany, as the means of transfer of liquid sums of money from one place to another, may be found in the early records of those periodical fairs, or markets, which were held in various parts of that country in the 14th, 15th, and 16th centuries.* Gradually the custom

* Holtzendorff, Encyclopædie der Rechtswissenschaft (2 Ed., 1877, pp. 517-19).

sprang up to use drafts in lieu of remittances in gold or silver coin. This custom became common in consequence of the iniquitous employment of debased currency resorted to by the needy and unscrupulous petty princes of Germany. Towards the close of the 18th century, however,† matters changed. Numerous works, several of which are referred to in the note at foot, testify unmistakably to great activity amongst jurists at that period. It can be readily understood that in many petty principalities of that country the greatest diversity prevailed. The irksomeness of this state of things had for many years attracted the attention of the Governments of Prussia and Austria, the Customs Union Conferences (*Zollverein Congresse*) affording favourable opportunities for the discussion of the question of establishing a common commercial law. In the years 1834 and 1835 this question was seriously agitated. In the year 1836 the Government of Würtemburg ‡ issued a *Promemoria* respecting a common Commercial Code and uniform rules for Bills of Exchange. Once awakened to the importance of the question, the cabinet at Berlin, with great astuteness, seized the opportunity thus presented, and issued a circular addressed to the various Governments of the Germanic Confederation, calling their attention to this matter. The impulse thus given prompted active inquiry on part of the public. Numerous pamphlets and writings were published, the Universities and Exchanges of Germany for ten years never flagging in their interest. Finally, in the year 1847, delegates from the different States met on the 9th December, at Leipzic, at

† For a history of the law of that period to the commencement of the 19th century, the writings may be consulted of J. G. Heinnecius, Elementa juris cambialis (A.D. 1742); J. G. Sieveking (1799), Wechselrecht); Püttmann, Grundsätzed. Wechselrechts; Büsch, Darstellung der Handlung, Buch I., von den Wechseln; Martens, Ursprung des Wechselrechts.

‡ Goldschmidt, Handelsrecht, pp. 78 & 79.

the invitation of Prussia. These delegates held thirty-five meetings, and adopted a Report which embodied all the points at issue. In the following year this Report was presented to the National Assembly at Frankfort, and was passed on the 1st May, 1849, the final adoption of the law thus voted being reserved to the respective legislatures of the separate States of Germany. With but few exceptions, the law thus voted was accepted (in some instances slightly modified); Austria, by letters patent, dated the 23rd January, 1850, giving its assent (Hungary, by the law of 21st June, 1861, doing the same).

The usefulness of the German Code on Bills of Exchange attracted the attention of other states. Sweden, by a law dated the 23rd August, 1851, adopted the Code (with but slight modifications); several Cantons of Switzerland and the Principality of Servia following its example; and on the 29th March, 1858, Finland likewise adopted the German Law. The independent action reserved by the different States which accepted the law as voted by the National Assembly resulted in divergencies which the cabinet at Berlin subsequently sought to remedy. A second Conference was convened: the delegates met at Nüremberg; and on the 15th April, 1860, the Nüremberg Conference voted the adoption of a Report which settled the points at issue. The Report of the eminent jurists, who attended this Conference was finally adopted by the Germanic National Assembly on the 13th April, 1861. This concludes the first chapter in the history of the foundation of a European International Code. The diversity of the laws in numerous States of Germany at that period rendered the task at one time one of great difficulty. The profound astuteness of the Cabinet at Berlin, supported, no doubt, by the sound common sense of the German people, however, not only faced, but conquered

this difficulty. With justifiable pride Baron von Holtzendorff * refers in his work on the History of Jurisprudence, to the creation (15th June, 1869) of a final High Court of Appeal at Leipzig, having jurisdiction over all commercial questions arising in any of the Germanic States. The German Code for Bills of Exchange extends over an area of 36,392 square German miles, peopled by 79½ millions† of inhabitants; its usefulness, and practical soundness has been tested by the experience of 30 years; its influence has been felt throughout the North of Europe, and the Code now preparing for the Scandinavian Kingdoms, and the amendments of the law contemplated by the Russian Government will, no doubt, follow the German law.‡

Having thus far mapped out the historical development of the law in Germany, it may be of interest to glance at the more salient features of the principles of law contained in the German Code of Bills of Exchange. Mention has already been made of the tardiness of the Germans in adopting and utilising these commercial instruments. In the year 1839 Dr. Karl Einert § published his treatise, in which he not only attacked the rule or principle laid down in the Code Commerce, but put forward his own theory, according to which he contended that a Bill of Exchange and a Promissory Note are, in principle, identical; for says Dr. Einert: It is perfectly the same whether I say, "Upon this my draft, pay Titus," or whether I say, "Upon this Bill I promise to pay Titus." The only difference between the two instruments consisting in this, that in the case of a Bill of Exchange, that is a draft, the drawer not only warrants payment, but also undertakes that the draft shall

* Professor Holtzendorff, Encyclopædie des Rechts (1877, 2nd Ed.).
† Dr. Borchardt, Wechselgesetze (1871) Vorwort, p. 8.
‡ Since writing the above, a project of a law has been published.
§ Dr. Karl Einert, Wechselrecht, ss. 2 and 3.

be accepted by the drawee; the maker of a Promissory Note, on the contrary, only undertaking to pay the note at maturity. It almost follows from this, that a Bill payable to order partakes of the characteristics of a Bill to Bearer, and that the same passes by mere delivery, and indorsement in blank.* Dr. Einert in support of his theory points to the wide-spread custom of creating a circulating medium by drawings in blank, that is without having funds in the hands of the drawee; a custom resorted to by the great banking firms of Europe to an enormous extent.

The theory of Dr. Einert was at first attacked with vehemence, even rancour, but gradually it took hold of the mind of the German jurists, until finally its influence was felt at the Leipzig and Nuremberg Conferences; indeed its adoption led to the rejection of the Code de Commerce, (Lettres de Change, Arts. 110, c. 189) as a basis for a Code on Bills of Exchange.

Narrowly scrutinized, the German law agrees with that of England in all its essential characteristics. A Bill of Exchange in both countries is negotiable; it may be in any form consistent with its nature (the words Bill of Exchange appearing, however, on its face); it may be indorsed in blank, nominative, or to order. All antecedent parties to a Bill are deemed co-principal debtors; the holder having a right of electing one or more, and may pursue his remedy against him or them. The consideration "*Valeur*" need not be stated on the Bill nor in any indorsement, the law presuming consideration: the defences permitted to be set up as against a holder are similar to those our courts allow, such as fraud, forgery, notice of trusts before acquisition, alteration of the date, of the sum payable after the drawing of a Bill; and equities between

* Kuntze Inhaberpapiere, p. 201.

immediate parties. In regard to protest, the German law resembles in many respects the French law; protest is absolutely necessary. Notice to antecedent parties is not needed, though omission to give notice may expose the holder to an action for damages should a loss result—in any such event default involves loss of claims for expenses and interest. A Promissory Note is deemed to possess all the characteristics of a Bill of Exchange. Bills to bearer are forbidden—the due day must be certain,—it cannot be made on an eventuality, nor are usances allowed. No limit is set as to the nominal amount of a Bill. The cancellatory clause in a duplicate is not needed.

Though it forms no part of the object of these introductory remarks to travel beyond an inquiry into the nature of the three great systems, the English, German and French, it may, nevertheless, not be uninstructive to state some of the salient features of the law of Russia, which sways supreme over the enormous area of eight-and-a-half millions of square miles, sparsely peopled by 85 millions of inhabitants. The Russian Ukase, under which a Commercial Code, which included Bills of Exchange, was founded, is dated the 25th June, 1832.* In the year 1842 an amended edition of the Imperial Russian Code was published in fifteen volumes, entitled, "Sswod Sakönow," which contained the laws from the year 1649 to the year 1842, chronologically arranged. The second part of the Commercial Code (Arts. 435 to 576) contains the law of Bills of Exchange dated 15th September, 1862; this law introduced several amendments. A projected draft Code has since been drawn up by order of the Russian Government, dated 1869. Since that year no progress has, however, been made, though it is generally understood that changes are

* Das Handels Gesetzbuch d. Russischen Reichs. Ukase, 1832, F. Schultz, Riga (1851).

contemplated. In all its more essential characteristics the Russian law resembles the German law of Bills of Exchange. In Finland the Law of 29th March, 1858, is based on the German Code. In Poland the Law of 24th March, 1809, and 9th June, 1810, adopts the *Code de Commerce.*

In the *United States* of America, that is, in the Northern States of the Union, the law of England as regards Bills of Exchange and Promissory Notes prevails. The important State of New York, in the year 1865 adopted the measure of introducing a Civil Code for that State. As regards Bills of Exchange and Promissory Notes a Draft Code, framed by the Commissioners, D. D. Field and Alex. W. Bradford, was adopted, and embodied in the Civil Code. (Tit. XV. On Negotiable Instruments.) The principles of law as contained in that Code may be taken, with some modifications, to be substantially the same in the States of New Jersey, Massachusetts and Pennsylvania. Chancellor Kent,* in a footnote to p. 74, v. iii., has given an excellent summary of the law as extant in the present day in the different States of the Union. According to this authority the Law of Merchant rules in most of the States of the Union in regard to negotiable instruments, subject, however, to many exceptions; thus, in the State of Virginia, a holder of a Bill or Note cannot maintain an action against an indorser, unless he be the immediate party, and this because no direct privity exists. The principle here laid down in fact follows the old Civil Law Rule in regard to assignments of choses in action. In the State of Indiana, and that of Kentucky, Promissory Notes payable at a chartered Bank within the State are deemed to be inland Bills. In Pennsylvania, Virginia, Arkansas, &c., sealed instruments

* Kent's Comm., vol. iii., p. 74. 12th ed. 1873.

are held to be negotiable. The few instances here cited are merely given to illustrate the embarrassing conflict of law which exists between the different States of North America. On this point, however, reference must be made to Story,* Wharton,† Kent,‡ and other writers on the Conflict of Laws.§

We have thus far mapped out the ground covered by past and modern legislation ;—pointing out the leading features of each system. From these materials the following summary of the points in difference may be briefly stated. Neither the Code de Commerce, the English Law, nor that prevailing in the United States of America, make it necessary that the words "Bill of Exchange" (Tratte, Wechsel) or some equivalent term should be written on the face of the instrument itself, whilst the Russian ‖ and German ¶ Codes require this.

These Codes, and the law of England and America do not require that the consideration should be expressed; whilst the Code de Commerce** requires that "*la valeur*" be stated on the Bill itself, and also on the indorsements.

The *Code de Commerce*,†† the *German Code*,‡‡ and that of Russia,§§ prohibit the making, drawing and signing of Notes or Bills of Exchange to *Bearer;* whilst, on the

* Story. Conflict of Laws, ss. 314, 360 (7th ed., 1872.)
† Wharton. Treatise on the Conflict of Laws. (1872.) p. 445 *et seq.*
‡ Kent's Comm.: (1873 ed.) p. 71, c. 110.
§ Phillimore. Comm. upon International Law. Vol iv., pp. 547, 652, c. 669.
‖ Russian Code, Art.541. See Borchardt. W.O.Z., p.56 and *Ibid.* Deut. Wechselgeschäfte, p. 356.
¶ German Code, Art 4.
** Code de Commerce, Art 110.
†† Code de Commerce, Art 10 ; see also Hoechster, Manuel de Droit Commercial, p. 423.
‡‡ General Law on Bills (Germany), Art 7.
§§ Russian Code, 541.

contrary, the law of the United States, and that of England and Denmark, permit this.

The limit prescribed as to the maximum and minimum nominal value of a Bill by the law of England and that of the United States, is disregarded by the Continental Code and Laws.

The *German Law*, it appears, does not require that the cancellatory Clause be inserted in a duplicate, or counterpart of a Bill, whilst most of the other systems of Codes render this necessary.

Interesting points arise in regard to the capacity to contract by parties to a Bill or Note. Formerly traders only enjoyed this privilege, but at a later date the habits of modern life have extended this capacity to all persons capable of entering into a binding agreement, and the custom thus created has all but universally been sanctioned by the legislature.

The *Code de Commerce* disallows blank indorsement (this is also the case in several of the countries where the Spanish, Roman, or Roman Dutch law prevails), whilst all the other systems permit *blank indorsements;* the title to a Bill being completed by mere delivery. Several points of interest arise in these cases where the indorsement, or delivery (if in blank) takes place after due date. According to the English, American and French law equities attach, the transfer after due date being deemed of the nature of an assignment, "*Cession.*"

The *German Code*,* however, makes a distinction between these cases in which protest has been made, and those where this has been omitted. In the former case the Bill retains its negotiable character, in the latter case equities attach as to subsequent parties.

* General Law on Bills of Exchange, Art 16.

In almost all countries (with the exception of some of the Southern States of North America) acceptance must be in writing on the face of the Bill itself.*

The Continental rule as regards furnishing security in the event of dishonour for acceptance merits special attention. Payment, according to the judicial notion prevailing throughout the Continental Codes, is of the essence of the contract, hence refusal to accept by the drawee does not annul the agreement; whilst the English law, and that of the United States, regard refusal to accept as vitiating the whole bargain, and entitling the holder to his immediate remedy against antecedent parties.

Notice of dishonour is required to be given by the Law of Denmark, England, the United States; default in giving notice entailing loss of rights as against antecedent parties.

The *Dutch and German Codes* do not take away rights of the holder in case of his default in giving notice, but have adopted a middle course, and only in part followed the Code de Commerce. These Codes give to a holder, if he has sustained a loss by such default, a right of recovering damages to the extent of any loss suffered by him.

In regard to the remedy, the right of election, that is pursuit of one or more of the antecedent parties; this is universally acknowledged as the rule, the only exception being in those countries in which the Civil Law rule of "*Excussionis et divisionis*"† is made to apply to negotiable instruments.‡

The time of limitation of actions (prescription) has finally to be mentioned. This period varies greatly in different

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* The wrongful detention, according to the Spanish Law (Codico de Comercio, Art. 456, as to acceptance), over 24 hours is deemed to be acceptance; the Code de Commerce, the Law of Sweden, Finland giving only a right of action for damages a holder may have been put to.

† Compendium of Roman Law. Tomkins and Jencken, p. 314.

‡ Borchardt, p. 244 and p. 245. Van der Linden. Institutes of the Laws of Holland, p. 678. A. holder has, however, choice of electing his party.

countries: thus the German Law (Art. 77) gives three years; the English Law, six years; in France, five years, Code de Commerce, Art. 187;* Italy, Co. d. C., Art. 282, five years; Spanish Code, Art. 537, four years; Portuguese Code, Art. 323, four years.

The increase of commercial transactions during the last half century, the migratory habits of the European races, large sections of the well-to-do classes periodically residing abroad, whilst the less well-to-do emigrate, has lent to all questions of International Private Law an exceptional character of importance. Bills of Exchange, Negotiable Securities, necessarily find their way into the hands of the merchant and capitalist, to whom it becomes a question of vital importance to know the precise legal character of the rights which give value to the piece of paper he possesses. The conviction of the desirability of a common Code has thus been gradually gaining ground. Story, in his admirable introduction to Bills of Exchange, points to the international character of a Bill of Exchange and negotiable instruments.† Savigny has also‡ addressed his mind to this question, and given expression to the views entertained by Story, in which Professor Bluntschli,§ Dr. Borchardt, and others concur.‖ In Germany a belief in the possibility of such consummation as a Common and International Code of Bills of Exchange has existed for some time, encouraged by the practical results achieved by the introduction of the General Law on Bills now in force in that Empire, Jurists, Legislators, and Merchants all agreeing that a common Code was desirable.¶

* See Hoechster, Manuel du Droit Commercial, p. 667.
† Story on Bills, Origin and Nature of, s. 20.
‡ Savigny, International Private Law; translated by Guthrie, 1869.
§ Bluntschli, Le Droit Int. Codifié; Molinari, Paris, 1874.
‖ Borchardt, Sammlung d. deut und ausländischen Wechselgesetze.
¶ Goldschmidt, Handbuch d. Handels Rechts, pp. 127, 177.

Notwithstanding the general assent thus expressed, no serious action towards the accomplishment of the desired end was taken until the year 1874; when, at the Conference of the Association for the reform and codification of the Law of Nations, held at Geneva, a Provisional Committee was nominated upon the reading of a paper by the author. At the direction of the Council the Secretaries framed circulars and a series of questions, which were addressed to Jurists, Bankers, and Merchants in the different European countries, and in the United States. In the result a vast amount of information was collected. This information was embodied in a report presented to the Hague Conference, 1875, which meeting nominated an International Committee. At the Bremen Conference of this Association (September, 1876), a series of resolutions, embodying principles of law were agreed to; six resolutions* being added to these at the Antwerp Conference (1877).† Whilst this Association was thus occupied in framing rules embodying fundamental principles, the Governments of Sweden, Norway and Denmark appointed delegates† to prepare a project or draft of a common Code for those three Kingdoms; adopting the German Code as their basis. In their report they have recommended the adoption of 21 out of the 25 Rules voted for at Bremen and Antwerp.‡

Further importance has been given to this movement by the interest shown by the German Government, at whose invitation it is understood Austria, Italy, Sweden, and some of the Cantons of Switzerland have consented to take part in a projected International Commission. Steps

* See Appendix for copy of resolutions.

† Mr. H. D. Jencken and Mr. J. Rand Bailey were appointed Honorary Secretaries.

‡ The new Code for Bills of Exchange is now in force in these Kingdoms.

have also been taken to bring this matter before the other Governments of Europe, including that of Great Britain, and of the United States. The efforts thus made have, it would appear, not been without result. Should the English Government consent to act in harmony with Germany and the other States, there cannot be any reasonable doubt but that one common law respecting Bills of Exchange, Promissory Notes and Cheques, and to include negotiable securities, will be finally agreed to, and the many differences which at present fetter the free circulation of negotiable instruments removed. The desirability, the expediency of having a common Code for Bills of Exchange, for, at all events, the northern countries of Europe, cannot be questioned. In its very nature a negotiable instrument is international; it serves as the carrier of property between distant countries. On the credit given to negotiable instruments all the vast trade of modern civilized life depends; without the *fulcrum* of credit it would be impossible for the merchant or manufacturer to supply the wants which our more civilized and exactious age imperiously demands to be met. As important as are the means of transit for goods and merchandize, equally so are these ready means of transfer of liquid sums of money carried on by remittances of negotiable paper. It may, indeed, be urged, supported by the experience of centuries, that the establishing of uniformity in the law and practice regarding negotiable instruments (Bills of Exchange), is a matter of State importance, and one worthy of the earnest attention of the peoples and governments of all civilized countries.

CHAPTER I.

OF THE CAPACITY TO CONTRACT.

SECTION I.—*Of the capacity to contract by means of a Bill of Exchange or Promissory Note.*

German Code.—Art 1.* Every person competent of entering into a contract is deemed capable of contracting by means of a Bill of Exchange or Promissory Note.

English Law.—Capacity to contract.—The English Law concurs with the German Law. An infant can convey title, but cannot be sued; he may sue, but payment should be made to his guardian; Bayley on Bills, p. 255; Byles on Bills, p. 58. Married women cannot contract; cannot be held liable.† If she has a separate estate she is liable in equity; Johnson *v.* Gallagher, 30 L. J., Ch., 298. As regards a Note or Bill in her favour, the interest vests in her husband. She may indorse even in her name under her husband's authority; Prestwich *v.* Marshall, 7 Bing., 565. Lunacy is a defence, if known to the contracting parties; Byles, p. 51. The law as to the liability of joint-stock companies is not clearly settled; a company may contract without affixing its seal. According to the *Scotch Law* a minor, if in business, so also a woman whose husband is abroad, may contract by means of a Bill of Exchange. Force, fear, avoid all liability.

* The Articles give a translation of the general law of the German Empire (20th November, 1848), on Bills of Exchange and Amendments comprised in the Supplemental Laws of Nürnberg.

† Byles, p. 63. See Judgment in Barton *v.* Bishop, 1 East., 432. As to the effect of the Married Woman's Property Act (33 & 34 Vict., c. 93, s. 1), see Summers *v.* City Bank, L.R., 9 C.P., 580.

Code de Commerce, Art. 4, provides that a married woman cannot be a trader (*marchande publique*) without the consent of her husband, but where she has such authority (Art. 5) she may contract. Art. 113.—Only a *simple promesse* is created by a woman being *négotiantes publiques;* Cod. d. C. of Italy, Art. 199; Cod. d. C. of Spain, Art. 43.

SECTION 2.—*Liabilities contracted by a debtor by means of a Bill of Exchange or Promissory Note.*

German Code—Art. 2. A debtor by virtue of a Bill of Exchange or Promissory Note becomes liable for the performance of the engagement he has undertaken, both in regard to his property and his person.*

English Law concurs; Byles, p. 93. Payment must be in specie, that is, in money; Bul. N. P., p. 272; Follett *v.* Moore, 19 L. J., Exch., 6. Thus a note to deliver up a chattel was held not to be a Promissory Note. See, however, Dixon *v.* Nuttall, 1 C. M. R., 307.

Code de Commerce, Art. 143, provides that "Une lettre de change doit être payée dans la monnaie qu'elle indique."

The *Belgian*, *Italian*, and *Spanish Codes* provide that, if payable in a foreign currency, the exchange value shall be taken.

SECTION 3.—*The presence of the name on a Bill of Exchange of a person who is incapable of contracting; its effect on the validity of the instrument.*

The German Code.—Art 3. In the event of the signature of a person who is otherwise incapable, or only in part

* The law of imprisonment as against parties to a Bill of Exchange has been abolished by the Federal Law of the 28th May, 1868.

capable, of contracting appearing on a Bill of Exchange or Promissory Note, such fact shall not affect the liability of the other parties to a Bill or Promissory Note.

English Law concurs: save where a holder has had notice, and has taken a Bill direct from a party incapable of making a title, a defence may be set up; Byles, pp. 58, 68.

The presence of a fictitious or forged name does not destroy the negotiability of a Bill, unless the title to a Bill rests on the validity of the instrument itself; Byles, p. 335; Burchfield *v.* Moore, 23 L. J., Q. B., 261.

Code de Commerce agrees in this respect with the German and English law.

Nougier, Lettres de Change, 318.—The indorser who negotiates a forged Bill is liable to his transferee; he, however, only warrants the signature of his immediate indorser, not that of prior indorsers. An acceptor has no recourse as against the pretended drawer of a Bill. The incapacity of an antecedent party does not invalidate a Bill as to subsequent parties.

CHAPTER II.

THE ESSENTIAL REQUISITES OF A BILL OF EXCHANGE.

SECTION 4.—*Of the essential requisites: form of a Bill of Exchange.*

German Code.—Art. 4. The essential requisites of a Bill of Exchange are—

(1.) That the word "Bill of Exchange" (*Wechsel*) shall be expressed on the face of the instrument itself; or where a Bill of Exchange is written in a foreign language, in some equivalent term in such foreign language.

(2.) The mention of the sum of money to be paid.

(3.) The name of the person or firm to whom, or to whose order, payment is to be made (the payee).

(4.) The date at which payment has to be made. The period of time within which the entirety of the sums stated has to be paid, can only be one and the same; this time or date may be—

On a given day;

At sight (presentment, *a vista*, &c.), or at a given date after sight;

At a given date from the date of the drawing or making of a Bill of Exchange or Note (after date).

(5.) The signature of the person remitting the Bill of Exchange (drawer) or Note (maker) or of his firm.

(6.) The description of the place, day of the month

and year, where and when a Bill or Note has been drawn or made.

(7.) The name of the person or firm who are to make the payment (the payee).

(8.) The name of the place where payment is to be made. The place of residence of the drawee, as stated on the Bill of Exchange, is the place where payment has to be made, unless some other place of payment shall be specially mentioned.

(1.) The *English Law* differs, no special form being required. A Bill may be even written in pencil, Gearey *v.* Physic, 5 B. & C., 234; Byles, p. 77.

(2.) *English Law* concurs. Usually in the body of the Bill; Elliot's case, 2 East., P. C., 951; Byles, p. 85.

(3.) *English Law* differs; it is sufficient if the payee be described, though not named; Yates *v.* Nash, 29 L. J., C. P., 306; Byles, p. 88.

(4.) *English Law* differs. No date is necessary: in the absence of such held to be a Bill on demand; Bayley, 5th Ed., p. 109. Payment may be by instalments; Byles, pp. 209, 344. See Carton *v.* Kenealy, 12 M. & M., 139.

(5.) *English Law* concurs. May be by a mark; Jeffery *v.* Walton, 1 Stark., 267.

(6.) *English Law* differs. No date need be named; De la Courtier *v.* Bellamy, 2 Shaw, 422. Date of making deemed the date of Bill. The description of the place where made is proper, but not necessary; Byles, p. 78.

(7.) *English Law* differs; Gray *v.* Milner, 8 Taunt., p. 739. Held a description of a person sufficient, capable of being ascertained, though not named; Storm *v.* Stirling, 6 E. & B., 333.

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On a given day;

At sight (presentment, *a vista*, &c.), or at a fixed date after sight;

At a given date from the date of the drawing or making of a Bill of Exchange or Note (issue date).

(5.) The signature of the person remitting the Bill of Exchange (drawer) or Note (maker).

(6.) The description of the place, date

(8.) *English Law* differs. The drawee's residence need not be named; Davis *v.* Clarke, 13 L. J., 2 B., 305; Byles on Bills, p. 79; Story, s. 57.

Code de Commerce, Arts. 110, 110 fin.), is most rigorous in regard to the form or wording of a Bill, and differs in many respects from the German, Belgian and English law.

The words, "Bill of Exchange," are not deemed necessary on a Bill.

Italian Code, Arts. 196, 198, and that of *Spain*, Arts. 438, 429, concur with the Code de Commerce, and a strict observance of the form of a Bill of Exchange is necessary as prescribed by these codes.

SECTION 5.—*Variance between the sum stated on a Bill of Exchange in writing and in figures.*

German Code—Art. 5. Where the sum to be paid is expressed both in figures and in writing, in case these differ, the sum expressed in writing shall prevail.

Where the sum to be paid has been rewritten both in figures and in letters, in case of variance between these, the lesser sum shall be taken as the sum payable on the Bill.

The *English Law* concurs. The written words, where differences appear, prevail; Chitty on Bills, 182; Byles, p. 84; Story, s. 42; Saunderson *v.* Piper, 5 Bing. (N. S.), 425; and where figures express a larger sum, evidence to show that the difference arose from accident is inadmissible. No rule exists where words and figures are repeated, and these differ.

Code de Commerce.—In France the sum payable on a Bill may be expressed either in words or figures; Locri, Esprit du Code de Commerce, t. 1, lir. i., pp. 336, 337. Where a difference exists, the written words prevail. The same rule is recognised by the Italian and Spanish Codes.

SECTION 6.—*Where the drawer of a Bill of Exchange is likewise the payee.*

German Code, Art. 6.—The drawer of a Bill may also be the payee (Art. 4, No. 3). (Bill of Exchange to drawer's order).

Hence the drawer may designate himself as the drawee. (Art. 4, No. 7), provided the payment is made at some other place than that where the Bill has been drawn.

English Law concurs; Byles, p. 91; Story, s. 56. A Bill of Exchange drawn on the drawer (*trassirt eigene Wechsel*) may be drawn at the same or some other place; but a foreign Bill implies that the drawee resides abroad. A Promissory Note cannot be made payable to the maker himself: it may be to bearer, or to some impersonal name; Story, s. 56; Chitty on Bills, ch. 11, p. 582; Browne *v.* De Winton, 17 L. J., C. P., 287.

Code de Commerce, Art. 110, provides that the drawing must be from one place on another; in this respect the *Italian Code*, Art. 176, that of *Spain*, Cod. de Com., Art. 429 concur. A draft payable to the order of the drawer is allowed. In practice this rule has been generally superseded, and Bills drawn and accepted in the same town are of every-day occurrence.

SECTION 7.—*In what cases informality in the form of a Bill of Exchange renders it void or voidable.*

German Code, Art. 7.—Any written instrument which fails to contain one or more of the essential requisites of a Bill of Exchange or Promissory Note shall not be deemed to be a Bill of Exchange or Promissory Note; neither shall any undertakings inscribed upon such instrument be

effective as constituting part of the same (such as indorsement, acceptance, seal). A promise to pay interest, inscribed on a Bill of Exchange or Note shall not be deemed to have been written.

English Law does not require that the forms referred to in Art. 4 of the German Code shall be observed (Sub-sections 2 and 5 excepted).

Interest may be made payable on the Bill itself; Byles, p. 307. Where interest is made payable on the face of the instrument, it is recoverable as a debt; Watkins *v.* Morgan, 6 C. P., 661.

Code de Commerce, Art. 112, provides that, where the essential requisites of a Bill do not appear to have been observed, the instrument shall be deemed a *simple promesse;* Code Civil, Art. 1153; Nougier, pp. 90, 91, vol. 2. See Loi du 10 Mars, 1871. Whether interest may be stated on the face of the Bill itself, is doubtful by the French law.

Italian Code de Commerce, Art. 178, *Spanish Code de Commerce*, Art. 438, and that of *Holland*, Art. 102, concur with the Code de Commerce, rendering an instrument, as a Bill, void in case of non-observance of the necessary form.

SECTION 8.—*Liability of the drawer of a Bill of Exchange.*

German Code, Art 8.—The drawer of a Bill of Exchange guarantees both the acceptance and payment by virtue of the Bill itself.

English Law concurs; Story, s. 107; Bayley on Bills, ch. 1., s. 15., p. 43 (1830 Ed.); Byles, p. 3. It is a conditional contract by the drawer to pay the payee, if the acceptor does not.

The essential distinction between the English and German law is, that the former regards Acceptance as an

essential characteristic, whilst the latter regards the ultimate payment as the vital part of the contract.

Code de Commerce, Art. 118, provides that "le tireur et les endosseurs" guarantee *in solidum* acceptance and payment, in which respect the *Italian* (Art. 205) and *Spanish* (Art. 515) Codes concur.

CHAPTER III.

OF INDORSEMENT.

SECTION 9.—*Of the essential requisites of indorsement.*

German Code, Art. 9.—The holder (payee) of a Bill of Exchange may transfer a Bill to a third person, by means of indorsement. Where, however, the drawer has forbidden transfer, by inscribing on the Bill of Exchange itself the words, "Not to order," or some equivalent expression, in such case an indorsement loses its power to effect the transfer of a Bill of Exchange.

English Law concurs as to the first par. of the 9th Art., but differs as regards the second par. The words "Not to order," bythe law of Germany, take away the right to sue as under a Bill of Exchange; the instrument becomes a mandate. Byles, p. 147, says, "that a Bill which does not contain the words to *order*, or *bearer*, is not transferable." An indorsement renders, however, though even subsequently made, the indorser liable on his indorsement. In Plimley *v.* Wesley (2 Bing, N. S., 249) the court raised the question of stamp. It is conceived that this point is virtually overruled.

A blank indorsement absolutely transfers a Bill to a *bonâ fide* holder; Byles, p. 149; Story, s. 50 and s. 200, 202. In the case of Brewer *v.* Widmaier (15th Nov., 1875), the Berlin court held that the taker of a Bill indorsed in blank took the same subject to equities, unless the person indorsing in blank intended to transfer the Bill; Borchardt, Wechselordnung, pp. 26, 27.

Code de Commerce, Arts. 136, 137, 138, is very rigorous. In case of any default in observing the prescribed rules, the 138 Art. says, "il n'opère pas le transport; il n'est qu'une procuration."

Italian Code—Art. 223 is even more rigorous. Indorsement of an overdue Bill is but a procuration to collect.

The recent Belgian Law, Art. 27 (May 1872), permits blank indorsement.

Spanish Code, Art. 167, renders an indorsement void which fails to name the payee or transferee.

SECTION 10.—*Of Indorsement: its requisites; consequences of informality.*

German Code.—Art. 10. By means of an indorsement all the rights arising out of a Bill of Exchange are transferred to the indorsee, more especially the right to the re-transfer of a Bill of Exchange by indorsement to a third person. A Bill may be validly indorsed to the drawer himself, to the drawee, to the acceptor, or to a prior indorser; any of those parties may re-transfer a Bill of Exchange by further indorsement.

English Law concurs with the German Code; Byles, 3, 147 *et seq.*, Story, s. 60, 62. An indorsement may be in blank, special, in full; it may be in favour of the drawer himself, of the drawee, acceptor, or any other person.

Code de Commerce, Art. 137, differs, as already stated, in Section 9. An indorsement to effect transfer must follow the rule prescribed by the Code.

SECTION 11.—*Form and mode of Indorsements.*

German Code.—Art. 11. The indorsement must be

written either on the Bill itself, or upon a copy, or upon a piece of paper attached (*allonge*) to the copy.

English Law.—Generally concurs with the German Code. No particular form is necessary, nor is it required that the signature should appear on the face of the instrument itself; it may be on another piece of paper, "*allonge;*" Story, s. 204; Byles, p. 150. An *allonge* is part of the Bill itself, and requires no additional stamp.

Code de Commerce, Art. 147, recognises duplicates, copies, and *allonges* of a Bill of Exchange; Nougier, No. 667; Fuleman, p. 102; Coutumes Commerciales, Endossements faits à l'étranger; Nougier, No. 670; Divers exemplaires: il ne faut pas confondre une copie avec la duplicata. Endossement irrégulier; *Ibid.*, Nos. 744 and 766; L'irrégularité de l'endossement ne libère pas les souscripteurs et endosseurs des effets de leur signature; Italian Code, Art. 232, concurs.

SECTION 12.—*When an indorsement is deemed valid; when void or voidable.*

German Law.—Art. 12. An indorsement is valid, even where the indorser only subscribes his name, or that of his firm, on the back of a Bill, or upon a copy, or upon an *allonge* indorsement in blank.

English Law concurs; Byles, pp. 148, 150. Story, ss. 108, 111, 119, 120. No cases appear to have arisen on the striking out of prior words in an indorsement, leaving the name in blank. The decisions of the German courts are opposed to such cancelling and conversion; see the judgments of the Supreme Commercial Court, Fol. 14, p. 141, and Fol. 17, p. 407.

As to striking out indorsements, see Byles, p. 154. Striking out intentionally cancels the indorsement; Fair-

borough *v.* Pavia, 9 Exch., 690. The definition given to a blank indorsement by the Supreme Commercial Court, above quoted (F. 17, p. 261), is to the effect that a blank indorsement is a simple declaratory act, binding the person liable on the Bill itself.

The *Code de Commerce,* Art. 137, prescribes the form and mode of indorsement, failing which the Art. 138 renders such indorsement void, and a procuration only is created. The *Italian* (Art. 224), *Spanish* (Art. 468), and *Portuguese* (Art. 357) Codes concur with the Code de Commerce. The *Belgian Code* (20th May, 1872), Art. 27, recognises, as already named, blank indorsements.

SECTION 13.—*Filling up blank Indorsements; imperfect Indorsements.*

German Code.—Art. 13. Every holder of a Bill is empowered to fill up a blank indorsement. He may, however, re-indorse a Bill without having filled up such blank indorsement.

English Law.—A Bill indorsed in blank may be filled up, and then, as against future parties, it becomes a Bill specially indorsed; but if once a Bill in *blank,* as against prior parties, it is always deemed to be a Bill in *blank;* Walker *v.* McDonald, 17 L. J., Exch., 377. An indorser may convert a blank indorsement into a special indorsement in his own favour, by superadding the necessary words; Clerk *v.* Pigot, 12 M. d., 193; Byles, pp. 103, 154.

Code de Commerce.—Art. 137. The French law only allows the drawer or indorser in blank to change the blank into a regular or special indorsement (*Nougier,* No. 750, c. 752, 775. Art. 137 requires, as already named, that the name, date, and consideration be expressed; and Art. 138 lays down the rule that, where those requisites have not

been observed, the "*endossement n'opère pas le transport.*"

The *Italian Code*, 223, *Spanish Code*, 467, concur.

SECTION 14.—*Legal liabilities incurred by indorsing a Bill of Exchange.*

German Law.—Art. 14. An indorsee is liable to all subsequent indorsers (holders) as a guarantor for the due acceptance and payment of a Bill of Exchange. But where the indorsement contains the words "without guarantee," "without liability," or *obligo*, or expresses any equivalent reservation, the party indorsing a Bill shall be deemed exempt from all liability under this indorsement.

English Law.—The liability under an indorsement may be avoided by adding the words "*Sans récourse*," or "*Without recourse to me.*" Even such words as "At the indorser's own risk" have been held, in America, at least, to exclude the personal responsibility of an indorser (Byles, p. 152). A question might arise whether exemption from warranty against *forgery* is included under these words.

Code de Commerce.—Art. 40 renders the indorsee *in solido*, liable, but he may relieve himself from such liability by adding the words, "Sans récourse" (Nougier, Stipulation de non-garantie: cette stipulation par le tireur ou les endosseurs est valable, Nos. 268, 269.—"Cassation arrêt du 11 Décembre, 1849." All the Continental Codes and laws maintain this rule: Spanish Code, Art. 473; Italian Code, Art. 225.

SECTION 15.—*Effect of making a Bill of Exchange unnegotiable.*

German Code.—Art. 15. Where the negotiation of a

Bill is forbidden by express words contained in the indorsement, such as "*Not to order*," or some equivalent term, a subsequent holder has no right of action against such indorser.

English Law.—An indorsement may be so worded as to suspend payment until the happening of a condition (Byles, p. 153). But a condition rendering a Bill unnegotiable has been deemed not to hold good; Soares *v.* Glyn, 14 L. J., B. B., 318. Parol evidence being inadmissible to prove the contrary, according to the American law, a note payable on a contingency does not interfere with its negotiability, the condition having the effect only of a notice.

Code de Commerce.—Art. 137. (Nougier, Nos. 766, 767), 138 C. C., 574 : endossement irrégulier. The non-observance of the three rules laid down (Art. 137) makes a Note or Bill *irrégulier*.

The Italian Code, 274, and Spanish Code concur.

Belgian Law, May, 1872, Art. 27.

SECTION 16.—*Indorsement after due date; rights of parties.*

German Code.—Art. 16. When a Bill is indorsed after the date of delay allowed for making protest in the case of non-payment, the holder only acquires such rights which result from the acceptance itself as against the drawee (acceptor), and he has a right of recourse against those who have indorsed the Bill after due date and expiration of the time for the making of protest.

But where a Bill has been protested for non-payment prior to such indorsement, the holder of such Bill possesses the rights enjoyed by his last indorser as against the acceptor, the drawer and other parties who have indorsed

the Bill up to the date of protest. In such cases the indorsee is not liable upon the instrument as a Bill of Exchange.

English Law.—There is no distinction between a Bill protested or not protested. An overdue Bill, says Lord Ellenborough, "comes disgraced, and it is the duty of the taker to make inquiry" (Sturtevant *v.* Ford, 4 M. & G. 101). That is, the holder takes the Bill subject to all the equities. In Lazarus *v.* Corrie, 3 Q. B., 459, it was held that the absence of consideration did not impair the right of a *bonâ fide* holder, unless an express or implied agreement existed restraining negotiation after due date. The equities which attach must, however, arise out of or attach to the Bill itself; collateral matters do not affect the rights of a *bonâ fide* holder for value.

The law of England does not make any distinction, save as to equities attaching before or after due date. An indorsement after due date entitles an indorsee to all the remedies of an original holder prior to maturity.

Subject to equities, the maturity of a Bill, in other words does not change the character of the instrument itself. The equities attaching to an overdue Bill are, says Story, s. 220, "only such equities as attach to the particular Bill, and as between these parties, would be available to control, qualify, or extinguish any rights arising thereon;" Burrough *v.* Moss, 10 Barn & Cresson, p. 563. See also *In re* European Bank, 5 Cham., App. 359.

Code de Commerce. Nougier says, No. 679, "La jurisprudence est fixée dans le sens qui reconnaît la parfaite validité des endossements donnés âpres l'échéance."

The Belgian Code, 20 May, 1872, lib. 26, agrees with the E. L., and allows transfer by indorsement after due date; the words, "*Non à ordre,*" operate as a prohibition to indorse.

Italian Code, Arts. 223, 224; Spanish Code, Art. 468, concur with the Code de Commece.

SECTION 17.—*Special Indorsement: rights of parties, how affected, and consequences on transfer.*

German Code.—No. 17. An indorsement containing the clause, "*for collection*," "*by procuration*," or any similar words implying a mandate, does not pass or transfer a Bill of Exchange, but it authorises the holder to give notice of non-payment to all antecedent indorsers and parties, and likewise to proceed at law for the recovery of the sum unpaid on the Bill—to receive any sum of money deposited in respect of such Bill. Such holder is likewise entitled to transfer his rights to a third person by indorsement, by virtue of his procuration. But he cannot indorse and transfer the Bill simply by subscribing his name, even in those cases in which the indorsement by procuration contains the words "*or order*."

English Law.—The words "per procuration," or "for collection only," appearing on a Bill limit the negotiability, and compel the holder to make inquiry. It is not easy to determine what words constitute a restriction. Thus the words, "to my use," have been held sufficient to limit the negotiability of a Bill; Story on Bills, s. 206, c. 207; see also Chitty on Bills, ch. 6, pp. 261, 262; Byles, p. 33; Smith's Mercantile Law, 134; see also Alexander McKenzie, 6 C. B., 278.

See Belgian L., Art. 26, May, 1872.

Code de Commerce.—Art. 136, c. 131; Italian Code, 224. Any variance from the form prescribed by the 137th Art. of the Code de Commerce makes the indorsement only a procuration. An indorser may exempt himself from liability by the wording of his indorsement.

CHAPTER IV.

PRESENTATION FOR ACCEPTANCE.

SECTION 18.—*Mode of presentment, and effects of.*

German Code.—Art. 18. A holder of a Bill is entitled to present forthwith to the drawee a Bill for acceptance, and, in case of refusal, he is entitled to cause protest to be made for non-acceptance. Any agreement to the contrary is void, at all events as arising out of the Bill. The only exception to this rule is the case of Fair and Market Bills, in which case presentation can only be legally made in accordance with the time of presentation prescribed at such fairs or markets; in the event of refusal to accept, a Bill may then be protested. Mere possession entitles a holder to present a Bill for acceptance, and to protest the same in case of non-acceptance.

English Law.—Any person in actual or constructive possession of a Bill of Exchange is deemed a holder, and may sue upon the Bill, and, *à fortiori,* may cause noting and protest to be made. By the custom of merchants, in order to charge the drawer of a foreign Bill, protest is necessary; Gale *v.* Walsh, 5 T. R., 239. This rule does not apply to a foreign Promissory Note; Bonar *v.* Mitchell, 19 L. J., Ex., 302.

Presentment of a Bill of Exchange must be in general made by the holder or his authorised agent; Chitty on Bills, ch. 7, p. 300.

Market and *fair* time, periods, or days, as the time of payment of a Bill, are unknown to the law of England;

but usances and days of grace are recognised. See Byles, 257 *et seq.*

Code de Commerce.—Art. 133 provides for a Bill "payable en foire;" so also the Italian C., Art. 219; Nougier, Lettres de Change, No. 916.

SECTION 19.—*Duty of a holder to present a Bill of Exchange for acceptance; consequences in case of default.*

German Code.—Art. 19. The liability on the part of a holder to present a Bill for acceptance only applies in the case of a sight Bill. Such Bill must be presented for acceptance, either within the time stated on the Bill, or within two years from the date of the Bill; and, in case of default, the holder loses his redress as against the drawer and all prior indorsers. Where an indorser has stated in his indorsement a limit of time for presentation, his liability ceases in the event of the time so prescribed being transgressed.

English Law concurs in not rendering it necessary to present a Bill payable after date for acceptance. In regard to sight Bills, however, the presentment must be within a reasonable time. What constitutes a reasonable time is a mixed question of law and fact; Mullick *v.* Peadakisen, 9 Moore P. C. Cases, 46; Mellish *v.* Rawdon, 9 Bing. R., 416; Story, s. 228; Byles, p. 180.

Code de Commerce.—Art. 120. The security required by this article of the Code to be lodged must be available on the due of the Bill of Exchange dishonoured for non-acceptance. *Italian Code* (259, 262), *Spanish Code* (486, 490), concur.

SECTION 20.—*Duty of holder to establish date of Presentment.*

German Code.—Art. 20. Where the acceptance of a

Bill drawn at a stated period after sight cannot be obtained, or where the drawee refuses to date his acceptance, the holder is obliged, at the risk of loss of redress against the other parties (the indorsers and drawer of the Bill), to establish the date of presentation by protest within the time prescribed by Art. 19.

In such event, the day of making protest is deemed to be the day of presentation. In case of omission to protest, the due date of a Bill of Exchange is fixed, as against the acceptor who has failed to date his acceptance, from the last day of delay required for presentation of the Bill.

English Law.—Protest by the Law of England is only necessary in the case of a foreign Bill of Exchange. Proof of presentment of a sight Bill must be given by the person presenting the Bill; and the due date, where acceptance has been made without specifying a due date, is a matter of evidence. In lieu of a fixed period, a reasonable time is allowed by Custom Merchant. What constitutes presentment is a mixed question of law and fact; Mellish *v.* Rawdon, 9 Bing. 46; Parker *v.* Gordon, 7 East., 385; Mullick *v.* Radakissen, 9 Moore P. C. Cases, 46.

Code de Commerce, Arts. 173. 184.

Nougier, Lettres de Change, Nos. 1220 to 1269.

CHAPTER V.

OF THE ACCEPTANCE OF A BILL OF EXCHANGE.

SECTION 21.—*Acceptance: how made, form and requisites of.*

German Code.—Art. 21. The acceptance of a Bill must be in writing and upon the Bill itself. Every statement or declaration written on the Bill itself and signed by the party chargeable is deemed to be an unconditional acceptance, unless it contains express words to the effect that the drawee either absolutely refuses to accept or that he accepts conditionally only.

An acceptance is likewise deemed unconditional whenever the drawee, without further explanation, signs his name, or that of his firm only, on the face of a Bill.

An acceptance, once made, is deemed irrevocable.

English Law.—The 19 & 20 Vict., c. 97, s. 6, enacts that no acceptance of a Bill, inland or foreign, made after the year 1856 "shall charge any person, unless in writing on the Bill, and signed by the acceptor or some person authorized by the acceptor." An acceptance may, agreeing with the German Code, be made conditionally (Sproat *v.* Matthews, 1 T. R., 182; Byles, 194); or it may be for only part of the sum of a draft (Wegerstoff *v.* Herne, 1 Stra., 214).

The mere writing across a Bill of the name of a drawee was not deemed an acceptance. It appears that, according to the authorities, an acceptor may cancel his acceptance before delivery of a Bill—at all events before he has communicated the fact of his having accepted the Bill, to the holder (Cox *v.* Troy, 5 B. & Ad. 414; Van

Diemen's Bank *v.* Victoria Bank, L. R., 3 Pr. c. 526; and L. J., Pr., c. 28. See also Byles, 196, 197). Cancellation of an acceptance by the holder is a waiver of acceptance. A holder is entitled to an absolute, unconditional, and unqualified acceptance of the Bill as drawn by the drawee, and is not bound to take any other acceptance (Story, s. 240).

The recent Act, 41 Vict., c. 13, Bills of Exchange Act, provides for acceptance by merely writing the name of the drawee across a Bill. (See the case of Hendaugh *v.* Blakey, 42 L. J., Q. B., 345.)

Code de Commerce.—Arts. 118 & 119, provide as to acceptance. The 124th Art. disallows a conditional acceptance, but permits a reduction of the sum for a Bill which has been drawn to be accepted for. In this respect the Belgian Code, Art. 15, and the Italian Code, Art. 211, concur. The rule of restrictive and conditional acceptance is greatly relaxed. Art. 122 requires that an acceptance shall be in writing, and dated. Nearly all the Codes —the Belgian, Spanish, Brazilian, require that the word "Accepted," or its equivalent, shall appear on the Bill itself.

The distinguishing feature of the French Law is the "provision;" hence the mention of *valeur fournie* has become necessary (see *Code de Commerce*, Arts. 114, 115). The Belgian Law (5 May, 1872) further provides for cases of conflicting claims on the funds in the hands of the drawee.

SECTION 22.—*Of limited, restricted, or conditional acceptance.*

German Code.—Art. 22. A drawee may limit his acceptance to a part of the amount for which the Bill is drawn.

In case the acceptance is burdened with any restrictive conditions, the Bill is deemed to be dishonoured for want of acceptance; the drawee who accepts a Bill is nevertheless liable to the extent of the engagement he has agreed to undertake.

English Law.—An acceptance of a Bill of Exchange must be for the total amount, and it must be unconditional, unless the holder waives his right; a drawee may, notwithstanding, be held liable to the extent of any engagement he has entered into; Byles, p. 193.

Code de Commerce provides (Art. 124) that an acceptance shall not be conditional, but it may be limited as to the amount accepted; the holder must in such case only protest for the balance. This rule is now greatly relaxed.

Belgian Code (L., 20 March, 1872, Art. 15), the *Italian* (Art. 211) and *Spanish Code* (Art. 459), concur.

SECTION 23.—*Legal responsibities incurred by accepting a Bill of Exchange.*

German Code.—Art. 23. The drawee, by accepting, contracts, under the Bill of Exchange, a liability to pay the sum stated on the same at due date; he also becomes liable under the Bill to the drawer by means of his acceptance. The drawee has, however, no right upon the Bill itself as against the drawer.

English Law.—Acceptance estops the drawee from denying the signature of the drawer; he likewise admits the capacity of the payee to indorse. An acceptance once made is deemed conclusive after delivery of a Bill; and it imports an engagement to pay the Bill in any event according to the tenor of the acceptance (Chitty on Bills, ch. 7, s. 2, p. 307; Phillips *v.* Im Thurm, L. R., 1 C. P.,

463). A party who procures another to lend his acceptance is bound to indemnify such accommodation acceptor; the acceptor cannot, however, sue upon the Bill, his remedy being by action for money paid. (See Yates *v.* Hoppe, 9 C. B., 541; Reynolds *v.* Doyle, 1 M. & G., 753; Byles, p. 130.)

Code de Commerce (Art. 121), *Belgian Code* (Art. 11), *Italian Code* (Art. 208), *Spanish Code* (Art. 462), concur in regard to the liability of the acceptor with the German Law.

SECTION 24.—*Where a Bill of Exchange is made payable at a place not being the domicile of the acceptor.*

German Law.—Art. 24. Where a Bill of Exchange is made payable at a place different to that of the domicile of the acceptor (Art. 4, No. 8), unless the Bill itself states by whom it shall be paid, the drawee is bound to state the place where payment is to be made. Where this is not done it is presumed that the drawee will himself make payment at the place of payment stated on the Bill.

The drawer of a Bill payable at the domicile of a third person may direct presentation for acceptance there. The non-observance of this direction entails the loss of right of redress against the drawee and prior parties.

English Law.—Unless otherwise directed by statute or some special law, the place of payment need not be stated on a Bill; though, where no certainty as to such place exists, the place where the acceptance has been made is deemed to be that of acceptance and payment. The 1 & 2 Geo. 4, c.78, provides, "that an acceptance payable at a particular place shall be deemed a general acceptance, unless the words 'only,' 'there only,' 'and not otherwise or elsewhere' be used;" Halstead *v.* Skelton, 5 R. B., 92.

Code de Commerce.—Art. 123. Nougier, Nos., 221, 228; Cassation, 4 Février, 1808, s., 81, 153:—"Le domicile indiqué par l'accepteur, pour le paiement d'une lettre de change, est un domicile élu pour recevoir l'assignation."

Italian Code (Art. 210) and *Spanish Code* (Art. 458) concur with French Law.

CHAPTER VI.

OF NON-ACCEPTANCE.

SECTION 25. — *Consequence arising out of dishonour for non-acceptance.*

German Code.—Art. 25. In the event of refusal to accept, or in the case of a conditional acceptance or acceptance for a lesser sum than that stated on the Bill, the drawer and prior indorsers are, on receipt of protest for non-acceptance, or because the acceptance is conditional only, liable to be called upon to provide security for the sum stated on the Bill, or for the balance of amount for which the Bill has not been accepted; they are also liable for all costs and expenses incurred consequent on non-acceptance.

The parties liable may, at their expense, deposit the sum of money due on the Bill in court, or in the hands of some duly constituted authority.

English Law.—In case of non-acceptance, the holder of a Bill of Exchange has the right of immediate recourse against the drawer and all the prior endorsers; Byles, 273 *et seq.*; Story, ch. 4, Proceedings on Non-acceptance, ss. 272, 321, 366; Chitty on Bills, ch. 8, p. 370.

In Vandewall *v.* Tyrrell, 1 M. & M., p. 87, Lord Tenterden ruled that, "Where an acceptor becomes insolvent, a holder may protest for better security;" *Exp.* Mackerbarth, 5 Ves. 374; Story, s. 121.

Protest for better security is only allowed where the acceptor's repute has become bad; a stranger may then

accept for honour. The system of finding security is otherwise unknown to the English law.

Code de Commerce, Art. 120, agrees with the German Code as to giving security in case of non-acceptance. The *Belgian Law*, Art. 11, *Italian Code*, Art. 208, so also the *Spanish Code*, 462, concur. The security given only protects the party for whom it is given; Nougier, Lettres de Change, No. 559.

SECTION 26.—*Consequences to the drawee and other parties by dishonour for acceptance of a Bill of Exchange.*

German Code.—Art. 26. The holder of a Bill of Exchange and each successive indorsee is authorised, so soon as he shall have made protest for non-acceptance, to exercise his right of demand for better security against the drawer and antecedent parties, as also to pursue his remedy accordingly against all or any of them.

The party seeking redress is not bound to follow the successive order of indorsements, nor is he restricted to any prior election made by him.

It is neither necessary to produce the Bill of Exchange, nor to furnish proof that the party seeking redress has given value.

English Law.—The right of a holder is for immediate payment; his action lies by the mere fact of the dishonour of a Bill of Exchange for non-acceptance; Chitty, p. 240.

Code de Commerce, Arts. 119, 120 (Des Protêts).—The Italian (168, c. 171) and Spanish (511, c. 525) Codes concur with the French Code, and entitle the holder to demand, after protest, security for the payment of the Bill.

SECTION 27.—*The Foreign Law in cases where security has been lodged in consequence of dishonour for non-acceptance.*

German Code.—Art. 27. The security lodged is answerable not only to the party seeking redress, but is available to secure all subsequent parties who are debarred, by virtue of such security being provided, from seeking their redress. Such parties can only demand better and further security, in the event of their disputing the efficiency or the amount of security furnished, or that the party liable has not furnished the required security to the antecedent parties.

English Law, as already stated, wholly ignores this rule, the holder having a right of immediate pursuit. (See Section 26.) Only in case of the notorious insolvency of an acceptor does a right arise to protest for better security, and demand that it be provided.

SECTION 28.—*As to when, according to the laws of Foreign States, security has to be lodged; and when and how it may be liberated.*

German Code.—Art. 28. The security so lodged has to be returned to the party depositing it—

(1.) So soon as the Bill has been accepted;
(2.) Where proceedings have not been instituted against the party liable, or he has provided such security, within one year from due date of the Bill;
(3.) In case the Bill has been paid, or where this instrument has lost its character as a Bill.

SECTION 29.—*Effect and consequences of the insolvency or bankruptcy of the acceptor.*

German Code.—Art. 29. In the case of acceptance for

the entire sum, or for a part only, demand for security can only be made, in respect of the sum for which acceptance has been made, in the following instances:—

(1.) Where the acceptor has been declared a bankrupt, or in the case of his having suspended payment;

(2.) Where, after the drawing of a Bill, an execution has been fruitlessly levied on the goods of an acceptor [or against whom personal arrest has been decreed after default of payment].*

In case the acceptor in any of the above-mentioned instances fails to provide the required security after protest made, and failing the obtaining of acceptance from an "in case of need" address mentioned on the Bill, the holder and all subsequent indorsers may, on delivery of protest, demand better security from any antecedent party on the Bill (Arts. 25 and 28); possession of a Bill being deemed equivalent to a power to demand security in the cases provided for under sub-sections 1 and 2.

English Law.—Protest for better security is recognised in the case of insolvency; failing such being given, a right of action for the principal sum and interest arises.

Code de Commerce, Arts. 161, 163.—"L'article 444 confirme la règle passée par l'art. 120, s. 2," which provides for security being given in the event of the bankruptcy or insolvency of an acceptor.

The Belgian Code, Art. 444 s., and the Spanish, 1035 s., and Italian Codes concur with the French Law.

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* As to arrest, revoked by the Law of the 29th May, 1878, abolishing personal arrest.

CHAPTER VII.

OF THE DUE DATE OF A BILL OF EXCHANGE.

SECTION 30.—*Mode of determining a due date where uncertainty prevails.*

German Code.—Art. 30. Where in a Bill of Exchange a certain day is named, its due date is on that day.

Where the due date is stated to be in the middle of a given month, the Bill becomes due on the 15th of such month. A Bill drawn payable on the first or on the last of a month, the due date shall be deemed to be the first or last day of such month.

English Law.—The many questions arising in regard to due date of a Bill of Exchange do not occur under the German Code. Bills payable after sight run from the date of acceptance; Campbell *v.* French, 6 T. R., p. 200; Sturdy *v.* Henderson, 4 B. & Ad., 592.

The rule is, that where a Bill runs from a given date, the days to run are computed exclusively of the day on which the Bill was dated or accepted; Byles, p. 205; Story, s. 329. Practically, the last paragraph of the 30th Art. is the same as the E. L., and the word "month" means the same day on the following or any subsequent month.

Code de Commerce: de l'Échéance, Art. 131, c. 135.—Nearly all the Continental Codes agree with the French Law, which makes the day expressed the date (*Belgian Code*, 22, L. 20 Mai, 1875; *Italian Code*, 218); they likewise recognise usances.

SECTION 31.—*Time of presentment of a Bill of Exchange drawn at sight or at a given number of days after sight.*

German Code.—Art. 31. A Bill drawn at sight is payable on presentation.

A Bill drawn at sight must be presented within the time prescribed: in case no time for presentation is stated, the Bill must be presented within two years, under forfeiture of loss of right of recourse against the drawer and all prior indorsers. Where an indorser of a sight Bill has stipulated in his indorsement for a given time within which presentation shall be made, the guaranty of the indorsee becomes forfeited in the case of non-presentation within the time thus prescribed.

English Law.—The limit of time creating a bar under the Statute of Limitation of Actions is, by the English Law, six years; the rule as to two years is unknown.

Presentment for payment of a Bill or Note payable on demand must be within a reasonable time. What constitutes a reasonable time seems to be a question of law; Tindal *v.* Brown, 1 T. R., p. 168; 2 Smith, S. C.; Parker *v.* Gordon, 7 East, p. 385.

Any condition which is imposed by a special indorsement must be observed; and if such condition stipulates for a time of delay, such delay must be observed.

Code de Commerce, Art. 129, c. 131.

Italian Code, Art. 217.

Spanish Code, Art. 440.

Nougier, Lettres de Change, No. 139.

Belgian Code, Art. 21 (May, 1872).

SECTION 32.—*Due date of a Bill of Exchange drawn at a given number of days after sight.*

German Code.—Art. 32. The due date of a Bill of

Exchange, payable at stated periods after sight or after date, is regulated as follows:—

(1.) Where the time to run is that of a given number of days, the due date is that of the last day. In computing the due date, neither the day on which a Bill is dated, nor the day of the presentation in the case of a sight Bill, is included.

(2.) Where the time to run is computed according to weeks, months, or a period comprising several months (a year, a half-year, a quarter of a year), the due date is fixed on the day of the week or of the month on which the Bill of Exchange is made payable, such time corresponding with the day of the presentation or of the date of the Bill; where that date is not expressed in stating the month in which the Bill becomes payable, the due date takes place on the last day of such month.

The expression "half a month" shall be deemed to mean a period of fifteen days. Where a Bill is made payable at one month, or payable after several months and half a month, the fifteen days included in the half-month shall be taken last.

English Law.—The time of the running of a Bill, whether such be a dated or a sight Bill, is in part regulated by the 13 & 14 Vict. c. 21, s. 4, and in part by custom-merchant. The computation runs exclusively of the day on which the Bill is drawn, or on which it is accepted, but inclusively of the day on which it falls due. A month means a calendar or solar month, not a lunar month. See Byles on Bills, 6th ed., p. 245.

It has already been observed (note to Sect. 30), that the German law has abolished days of grace; hence subs. 1 has no application. Three days of grace have to be added according to the English law. The German law in part

inverts the order, and exempts the dated day and that of presentation in computing the time.

The mode of computing months or half-months appears useful; but this is unknown to the English law.

Code de Commerce, Arts. 129, 130: de l'Échéance.

Pardessus, C. de Droit Comm., No. 336.

Dalloz, Effet de Comm., Art., s. 5.

Italian Code, 216; *Spanish*, 439; *Belgian Code*, 20 (May, 1872).

SECTION 33.—*Days of Grace.*

German Code.—Art. 33. Days of grace are abolished.

English Law.—The days of grace are three days, and are reckoned exclusively of the day on which the Bill falls due, and inclusively of the last day of grace; Byles, p. 208; Chitty, 266.

Code de Commerce (Art. 135), *Italian* (Art. 221) and *Spanish Codes* (Art. 447) abolish days of grace. See *Code de Commerce*, 157, 161, for the various periods of days of grace and usances. An excellent summary will be found in M. Hoechster's Manuel de Droit Comm., pp. 558 to 565.

SECTION 34.—*Date Bills—Old Style and New Style.*

German Code, Art. 34.—Where a Bill is drawn payable after date, in a country where the old style is in use, and it is not stated that it is drawn new style, or where a Bill is dated in both styles, the due date is the day of the new style, according to its corresponding date to the old style.

English Law.—The rule appears to be that the due date of a Bill is governed by the place where drawn, if made at a place using one style and payable at a place using a different style to that of the place where made; but if

after sight, then the style of the place on which the Bill is drawn governs ; Beawes, p. 444 ; Byles, p. 207.

Code de Commerce, Arts. 133, 134.

The *Belgian Law,* 20 Mai, 1875, the *Italian Code,* 220, the *Spanish Code,* 446, concur with the French Law.

SECTION 35.—*Bills drawn at a date from fair-time to fair-time.*

German Code, Art. 35.—Fair and market Bills fall due in accordance with the law of the fair or market and the place where the same are made payable ; or, in default of any direction, on the day of the closing of such fair or market. Where the fair or market only lasts one day, the due date is on such day.

English Law.—This is a matter of evidence, and must be determined according to the due date of a Bill by the particular fair-time in question. In all these cases, usage and custom govern. This period of time must not be confounded with usance ; Byles, 260, 261.

Code de Commerce, Art. 134, Belgian L., 20 Mai, 1875, Art. 25, Italian Code, 220, Portuguese Code, Art. 375, concur with the rule of the German Code in its main features.

SECTION 36.—*The legal position of an indorsee on a Bill of Exchange.*

German Law.—Art. 36. The holder of an indorsed Bill is legally held (*legitimirt*) to be the owner of a Bill by means of an uninterrupted succession of indorsements. The first indorsement must hence contain the name of the party transferring a Bill of Exchange ; and each successive indorsement that of the last antecedent indorser. An indorsement in blank, followed by another indorsement, pre-

sumes the transfer of the ownership of the Bill to the indorsee.

All indorsements which have been struck out are deemed not to have been written. The party paying a Bill is not bound to verify the genuineness of prior indorsements.

English Law.—If a Bill is made payable to order, transfer can only be made by a written order: this is usually made on the back of a Bill. The rule of successive indorsements is required by the law of England: in case of blank indorsements, the transfer from a prior to a later indorsee is presumed; not so if a Bill is to order.

The rule, as laid down by the German Code, that the expunging of a name shall be held to be the same as if a name had not been written, is not quite settled. See the case of Bartlett & Bendon, 15 L. J. Reports, Exch., 23.

Payment has only to be made to the true holder; the payer need not trouble his head as to other parties; Field *v.* Carr, 5 Bing., 13; Byles, pp. 1, 147, 154, 214.

Code de Commerce, Art. 149: de la Solidarité.

SECTION 37.—*Payment in foreign Currency.*

German Law.—Art. 37. Where a Bill is payable in a stated coin, which is not the currency of the place of payment, the amount stated on the Bill may be paid at the exchange value at the period of due date in the currency of such country, unless the drawer has, by the word "effective" ("actual") written on the Bill, or by some analogous term, expressly directed that payment shall be made in the required coin or currency.

English Law.—This has been a much mooted question. Story (Bills of Exchange, §. 418) holds, that the value of foreign coin at the time when the Bill is drawn (Chitty on Bills, ch. 9, p. 433) is the rule. In this view he is confirmed by Pardessus (Droit Comm., tom. 5, art. 1495).

It is within the power of the drawer to stipulate for payment in a particular coin, which, in fact, amounts to a contract for delivery of chattels. In determining the value in the event of breach, the value of the coin at the place of fulfilment of the contract would, it is presumed, be the rule for the measure of damage.

Code de Commerce, Arts. 143, 161, Hoechster, Manuel de Droit Commercial, p. 569, *Italian Code*, Art. 228, the *Spanish Code*, Art. 494, provide for exchange value; *Belgian Code* (Art. 33), Law 20th May, 1872. As a rule all the Continental codes provide, where payment is to be made in a foreign currency, for the exchange rate of such currency.

SECTION 38.—*Part payment of the nominal sum stated on a Bill of Exchange—legal effect of.*

German Code.—Art. 38. The holder of a Bill of Exchange shall not even then refuse part payment of a Bill where an acceptance for the whole amount has been subsequently made.

English Law.—Part payment is no discharge of a debt; in fact, no obligation exists to accept part, though such may be taken *pro tanto*, and protest made and proceedings instituted for the balance ; Chitty on Bills, ch. 9, pp. 442, 452 (8 Ed.). The giving time, or a release of a party primarily liable, operates as a discharge of all antecedent parties ; Byles, p. 224 ; Story, s. 436.

Code de Commerce.—Art. 161. *As regards payment.* Payment of a duplicate (Art. 147) annuls the counterpart. A holder need not take part payment (Art. 1244 du Code Civil). The *Italian* and *Spanish Codes*, 494, 506, concur in this respect.

SECTION 39.—*The person liable on Bill of Exchange; his right on payment to have the same delivered up to him.*

German Code.—Art. 39. The debtor on a Bill is only obliged to pay against delivery to him of such Bill duly receipted.

Where the debtor on a Bill pays a part only, he can only insist on the amount paid being receipted on the Bill itself, and that a receipt be granted to him agreeing with that written on the Bill itself.

English Law.—Where a Bill of Exchange is not negotiable, payment cannot be refused, even where delivery of the Bill is refused. If, however. the instrument is negotiable, the party making payment has a right to insist on the Bill being delivered to him; Hansard *v.* Robinson, 7 B. & C., 90; *Comes* v. *Taylor*, 10 Exch., 441; Byles, p. 231.

The 17 & 18 Vict., c. 125, s. 87, continued by the 38 & 39 Vict., c. 77, s. 21, provides for an indemnity being given by the holder. The rule as to indorsing or receipting part payment on the Bill itself is only a custom or usage, and is not compulsory. A receipt on a Bill or Promissory Note, which is duly stamped, does not require an additional stamp (55 Geo. IV., c. 184, Schedule Receipts).

It is quite clear that tender of part of the amount of an entire sum due on a Bill of Exchange or Promissory Note is not good, even *pro tanto;* and this even in those cases where a set-off may be set up as to the residue; Searles *v.* Sadgrove, 5 E. & B., 639.

Code de Commerce, 143.—Hoechster, p. 568: "Le paiement se constate par un acquit de la main du porteur sur la lettre de change."

The *Italian* and *Spanish Codes* concur.

SECTION 40.—*The Law of Foreign States as regards depositing the amount of a Bill of Exchange in Court.*

German Law.—Art. 40. Where payment of a Bill at due date is not demanded, the acceptor may, at the expiration of the time allowed for protest for non-payment, deposit the amount of the Bill in court, or at some other duly authorised office; such deposit will be at the cost and risk of the holder. The holder need not be cited to intervene.

English Law.—Payment into court after action brought upon application for leave to defend is the only form recognised by the Law of England. The provisions of the 40th Art. of the German Code do not apply.

French Law.—The French Law, 6 Thermidor, An III., recognises payment of the amount of an overdue Bill into the Caisse des Depôts et Consignations; and the *Italian* and *Spanish Codes* concur substantially with the French Law.

CHAPTER VIII.

RECOURSE ON A BILL OF EXCHANGE.

SECTION 41.—*Requisites to be observed to entitle a holder to his remedy against the drawer and prior indorser or indorsers.*

German Law.—Art. 41. To entitle the holder, in the event of non-payment, to his remedy as against the drawer and prior indorsers, it is necessary—

(1.) That the Bill of Exchange should have been presented for payment.

(2.) That the fact of presentation, and of non-payment, be recorded in a protest made within the prescribed time.

The erecting of a protest may be done on the due date of a Bill, but in any event, at the latest, within two working days after due date.

English Law.—Presentment and notice of dishonour are necessary. In the case of non-payment, the notice given must be in intelligible language (Solaste *v.* Palmer, 7 Bing, 530); as between two or more parties, notice may be waived by special agreement. By custom merchant, in order to charge the drawer and others, in the case of a Foreign Bill of Exchange, it is necessary to certify the dishonour by protest; Gale *v.* Walsh, 5 T. R., p. 239. This does not, however, apply to a Foreign Promissory Note; Byles, p. 259; Story, s. 325. Protest must be entered on the day on which payment is refused (this is usually done by noting), but it may be completed at any time before action

brought; nay, even at the trial; Chaters *v.* Bell, 4 Esp., 48.

Every indorser on a Bill is entitled to notice, unless he is not entitled to any remedy; Turner *v.* Samson, L. J. 46, App., 167.

Code de Commerce, Art. 119, requires "protêt faute d'acceptation."

Code de Commerce, Art. 162, requires "*protêt faute de payement.*"

The *Code de Commerce* fixes the delays for presentation according to locality and distance; the Loi of the 3rd of May, 1862, has modified the Code.

The *Belgian* and *Italian Codes* agree. The *Spanish Code* (Art. 511, c. 525), requires protest and notice. Want of either entailing loss of recourse; even as against the drawer, if he has funds in hand at the time.

The *Belgian Law*, 53 (20th May, 1872), agrees with the German Code, and allows two days before entering protest, holidays not being included in the period of delay.

SECTION 42.—*Consequences of a request or direction not to note or protest.*

German Code.—Art. 42. A declaration requesting that no protest shall be made (without protest, without costs) only dispenses with protest, but does not release the holder from liability of presentation at due date. The party liable on a bill, who inserts this declaration, takes upon himself the burden of proof, in case of any dispute as to the due presentation of a Bill. This clause does not, however, exempt from liability to pay the costs of a protest, should such costs be incurred.

English Law.—A request by the drawer that in the event of dishonour the Bill shall be returned without noting

or protest, exempts the holder from causing protest to be made, at all events, as against the drawer. Presentment is, nevertheless, necessary. Inevitable accident or casualty may excuse the making of a protest. This is one of the few instances of the recognition of a *force majeure* by the Courts of England. See Chitty on Bills, ch. 8, p. 360. (8th Ed.) Where there are no funds in the hands of a drawer the holder will not be deemed to be prejudiced by the want of protest; Legge *v.* Thorpe, 12 East., R., p. 171; Story, s. 280; Byles, p. 262; Chitty, 10th Ed., 114.

Code de Commerce.—Arts. 173, 175. Nougier, T. ii., p. 37, says: "La convention qui intervient entre l'endosseur et le porteur d'un effet de Commerce pour dispenser le porteur du protêt, n'a rien d'illicite;" Demangent sur Barvard, p. 422, en note.

Italian Code, 261. The words or clause "without protest or expenses" convert a Bill into a simple mandate, or direction to pay.

Spanish Code, 522. The *Belgian Law,* Art. 66 (May, 1872), permits, in case a clause is inserted without protest, notice of a simple declaration to take its place; that is, a written memorandum of the fact of presentation and dishonour.

SECTION 43.—*Where the place of payment is stated on the Bill itself, legal obligation to present it at such place.*

German Code.—Art. 43. A Bill of Exchange payable at the domicile of a third person must be presented for payment at the address of such person; or, in the absence of an address, a Bill must be presented to the drawer at the place of the drawing of the Bill. It has also to be protested at such place. Where default is made in making protest by the holder, such default involves the forfeiture of all right of

action on the Bill, not only as against the other parties (indorsers) to a Bill, but also as against the acceptor.

English Law.—After much discussion the rule laid down in the case of Rowe *v.* Young, 2 B. and B., 165—namely, that presentment at the place named on the Bill is necessary—has been adopted; this rule was subsequently modified by the 1 & 2 Geo. IV., c. 78, which rendered the adding of the words "not otherwise," "or elsewhere," obligatory; failing the employment of these words the acceptance is deemed to be payable generally. Byles appears to hold that the statute is confined to the acceptor only. As between other parties presentment at the place indicated is necessary. Presentment for payment at the usual place of residence, or place of business of the acceptor suffices; Brown *v.* McDermot, 5 Esp., 265; Byles, 213; Story, s. 352. It appears that protest must be made in the place where the Bill is made payable; 2 & 3 Will. IV., c. 98.

Protest is only necessary in the case of a Foreign Bill of Exchange; Byles, p. 259; Story on Bills, ss. 273, 281, and Story on Promissory Notes, 6th Ed., s. 298, says: that protest on a promissory note is not necessary; it is, however, required by the foreign law.

Code de Commerce.—Arts. 111 and 123. The *Italian*, Art. 211, and *Spanish*, Art. 458, *Codes*, concur with the French Law as to presentation at the domicile of the drawer, even where payment has to be made at another place.

Nougier, Lettres de Change, T. i., p. 340.

SECTION 44.—*As regards the acceptor of a Bill; when protest or noting deemed necessary.*

German Law.—Art. 44. Except in the case provided for by Art. 43, neither presentation at due date nor pro-

test are necessary to preserve the rights as against the acceptor.

English Law.—An acceptor is always liable; it is neither necessary to present for payment, nor protest, a Bill as against him. The exception given in the Art. 43 of the German Code does not apply; Byles, p. 197; Bayley on Bills, ch. 7, s. 1, p. 208, *et seq.*; Story, s. 113.

Code de Commerce.—Arts. 157, 150. "L'accepteur devient débiteur principal;" Nougier, t. i., p. 349.

In this respect the Italian and Spanish Codes concur. The principal debtor is the acceptor, and his liability continues until barred by prescription.

SECTION 45.—*Notice, when to be given to the other parties on a Bill of Exchange.*

German Code.—Art. 45. The holder of a Bill protested for non-payment is bound to give, within two days, notice in writing to the party immediately preceding him of the dishonour of a Bill; the posting of a letter within such time being deemed sufficient service of notice. Each successive holder is obliged to give notice within a like period to his antecedent party. A holder or an indorser who fails to give such notice, or omits to give the same to the party immediately preceding him, is liable in damages to all antecedent parties, or such as he may have passed over, for any losses incurred in consequence of his omission to give notice. He likewise sacrifices, against such persons, all rights to interest and costs, and can only recover the principal sum.

(1.) *English Law.*—The rule is, that notice must be given within a reasonable time.

(2.) Smith's L. C., p. 195. Where the party to whom notice is sent lives at a different place than that of the domicile of the holder, it is sufficient to despatch

the notice on the next day after the dishonour of the Bill; where the holder and the other party live in the same town, notice must be given in time to be received on the following day.

As to posting after hours, see Smith *v.* Mallett, 2 Campbell, 268.

The consequence of failure to give notice is, that the party chargeable is wholly released from his liability under the Bill. It will be observed how widely the English Law differs from the German Law in this respect.

It is impossible to lay down any rule as to the *time* for giving notice in the case of Foreign Bills; Story, s. 285, 286. Byles, 282. A reasonable time and due diligence must be used; Gladwell *v.* Turner, L. R., 5, Ex., 59; 39 L. J., Ex., 31. If the parties live in the same place, the notice must be given in time for the day after; if resident at a different place, the day after will do for posting; Williams *v.* Smith, 2 B. & Ald., 496.

A person who receives a notice (indorser, &c.) need not transmit it until the day after; Geill *v.* Jeremy, Moo. & M., 68; he is entitled to a full day; Story, s. 294; Bayley on Bills, ch. 7, p. 268; Chitty on Bills, ch. 10, pp. 513, 514.

Code de Commerce.—Art. 174. Nougier "Des Protêts," T. i., p. 92 to 141, gives a summary of the law and leading cases; notice after protest as against the other parties to a Bill before action is brought is necessary. Even the bankruptcy of an indorser does not relieve a holder from notifying protest to the syndic of the bankrupt indorser; to entitle a holder to recover against an indorser, he must firstly protest, and then notify within the 14 days prescribed by law; Code de Commerce, Arts. 167, 168; Belgian Law, 58, 59 (May, 1872); Italian Code, 253, 254.

SECTION 46.—*What constitutes Evidence or Proof of Notice.*

German Code.—Art. 46. It suffices as proof of delivery of a written notice to an antecedent party to produce a post office certificate of the posting of notice on the day required, unless it can be shown that the letter posted and received was to a different effect. The day of receipt of such letter may be proved by a certificate of the post office.

English Law.—The posting of a letter at a post-box is the most common and safest mode of giving notice. Evidence of receipt of letter is not necessary; Woodcock & Houldsworth, 16 L. J., Ex., 49; Byles, p. 281.

The direction must not be to a person at large in a town; Walter *v.* Haynes, R. & M., 149.

The evidence of posting is always a matter for the jury; the post-mark of a date is not deemed conclusive; Rex *v.* Johnson, 1 East., 65.

SECTION 47.—*Where the address of the drawer or of an indorser is unknown; as to mode of giving notice.*

German Law.—Art. 47. Where an indorser has transferred a Bill without stating the place of his domicile, notice of non-payment may be given to the immediate preceding indorser.

English Law.—Ignorance of the residence of a person will exempt from liability of giving notice, where all ordinary means of acquiring the needed information have proved fruitless; Baldwin *v.* Richardson, 1 B. & C., 245. What constitutes reasonable notice must depend upon the circumstances of each case; Chapcott *v.* Curleries, 2 Moo. & Rob., 484. See Chitty on Bills, ch. 10, p. 516, 524. Notice to a firm may be given at the domicile of either of

the partners; Porthouse *v.* Parker, 1 Camp. R., 82. Story, s. 229; Byles, 300; Bayley on Bills, ch. 7, § 2., p. 274; Story on Promoters, s. 335 (6th Ed.).

Code de Commerce, Arts. 164, 166.—Protest takes the place of notice until proceedings are instituted; then it becomes necessary. See Hoechster's "Manuel de Droit Commercial Français et Etranger," p. 466 *et seq.*, for the periods in other countries.

SECTION 48.—*Rights of holder to claim amount of the Bill and the expenses incurred for noting, protest, etc.*

German Law.—Art. 48. Every person liable on a Bill of Exchange has a right, on payment of the sum stated on the Bill, together with interest and costs, to demand the delivery to him of the Bill, duly receipted, together with the protest for non-payment.

English Law.—Where a Bill is in existence, the party paying the same is entitled to have the Bill or Note delivered up to him; Carnes *v.* Taylor, 10 Exch., 441. The 17 & 18 Vict., c. 125, s. 87, enables, however, a holder of a lost Bill, on giving security, to recover the sum due on a lost Bill. The 9 & 10 Will. III., c. 17, 83, provides for the case of loss of an Inland Bill before due date. See Story, s. 348, on the American Law on this point.

French Law.—Delivery of the *effet de Commerce* or *un acquit* is necessary; Trib. de Com. de Paris, 8 Mars, 1843. Nougier, No. 904, 905, says the French Law is not clear on this point.

SECTION 49.—*Right of election of holder as against drawer and prior indorsers.*

German Code.—Art. 49. A holder of a Bill protested for non-payment may pursue his remedy on a Bill against

all the parties liable on the same, or he may elect one or more, without sacrificing his right of action against the others. He is not bound to follow the order of succession of indorsements.

English Law.—A holder may proceed at once, in separate and concurrent actions, against all the parties liable on a Bill, or against one or more of them. Substantial satisfaction by one debtor discharges all subsequent parties. Execution on the goods of a debtor on a Bill after levy on another party liable will be restrained; *Exp.* Wildman, 2 Ves. Sew., 115; Byles, p. 407. The plaintiff may join all the parties in one writ; 18 & 19 Vict., c. 67, s. 67. See also Judicature Act, Ord. XVI., r. 5; Story on Bills, s. 204, and Story on Promissory Notes, s. 151.

Code de Commerce, Arts. 164, 167; Nougier, t. ii., p. 81. The *porteur* may take his remedy against his last indorser, or any of the antecedent parties; the holder, says Nougier, "a le droit de les assigner collectivement ou séparément;" Nougier, Actions Récursoires, No. 1195.

Italian Code, 253, concurs. The Spanish Code, 534, requires that after election made the action must be followed up; no proceedings being allowed until the happening of insolvency against the other parties. The same prevails at the Cape of Good Hope and other countries where the Civil Law is in force.

SECTION 50.—*Rights of recourse of holder (Foreign Law) after noting or protest.*

German Code.—Art. 50. The right of recourse of the holder on a Bill protested for non-payment is limited as follows:—

(1.) To the sum not paid, and six per cent. interest from the due date of the Bill;

(2.) Costs of protest and other expenses;

(3.) A commission of one-third per cent.

Where the defendant does not reside at the place of payment, the liquidation of the sum to be paid must be made at the rate of exchange of a Bill at sight drawn on the place where the draft became due.

Where no rate of exchange exists between the place of domicile and the place where the Bill is payable, the rate of the next nearest place at which an exchange exists shall determine the rate. The rate of exchange must, if required by the person chargeable, be attested by a certificate of the exchange by some public functionary, or certified to by a sworn broker, or, failing these, must be proved by an attestation signed by two merchants.

English Law.—An acceptor, unless he has made a special agreement, is liable for the principal sum, the costs of noting and protest, and interest. Interest is, however, unless stated on the face of the Bill itself, recoverable by way of damages only for the retention of the principal sum. A jury may only give nominal damages, or even withhold to allow such; Lowndes *v.* Collins, 17 Ves., 27; Byles, p. 308; Story, s. 398. See also the cases of Florence *v.* Jennings, 26 L. J., C. P., 275.

An acceptor is liable, according to the law of the place or country where the acceptance is made; a drawer is liable, according to the law of the place or country where the Bill has been drawn, all indorsers and guarantors according to the law of the respective places where these have made themselves liable; Story on Bills, s. 166; Conflict of Laws, s. 317. Paul Voet says, "Quid si de litoris cambii incidet questio; quis locus erit."

Re-exchange is settled by the law merchant: it is the true damage on a dishonoured Bill of Exchange, but scientifically ascertained. The drawer is liable for re-exchange; Mellish *v.* Simeon, 2 H. Bld., 378.

Circuitous re-exchange is allowed, where direct re-exchange cannot be made; this may result in a successive, that is, a cumulative re-exchange; Kent., Comm. Lect., 44, p. 115; Story, ss. 400, 402. See the case of Suse *v.* Pompe, 30 L. J., C. P., 75; as to suing for re-exchange on a Bill, Byles, p. 415.

The rules laid down by the German Code are unknown in England and America (U.S.) Custom and law merchant are matters of evidence. The rate of re-exchange is a variable *quantum* (Pothier, De Lettres de Change, n. 64), and must be always a matter for a jury to determine.

Code de Commerce.—Arts. 177 and 178. See, as to *retraite*, Art. 180. Art. 183 prohibits *rechanges cumulés.* The *Belgian* Code (72, c. 81), the *Spanish* Code (549), the *Italian* Code (253), concur with the French law.

SECTION 51.—*Rights of election of the holder of a Bill of Exchange against one or more of the antecedent parties.*

German Code.—Art. 51. The indorsee who has taken up a Bill, or has received it as a remittance, has a right to demand from his prior indorser, or from the acceptor—

(1.) The sum he has paid, or for which it has been remitted, and six per cent. interest from the due date;

(2.) All expenses incurred by him;

(3.) A commission of one-third per cent.

These amounts must be paid, where the person liable and the person entitled to receive the payment reside at different places, at the rate of exchange of a Bill at sight drawn at the place of the party liable, on the place where payment has to be made.

Where no rate of exchange exists between the two

places, the rate of exchange is determined by the place next nearest to the domicile of the party liable. The rule contained in Art. 50 applies in regard to the certifying of the rate of exchange.

English Law.—The debt created by acceptance of a Bill is not extinguished by the payment of the Bill by one of the other parties to the same: either the drawer or indorser may pay it and reserve their rights.

The holder who pays the Bill takes it, that is—*retires* the Bill, with all his remedies unimpaired; he is deemed to be a trustee for the drawer; Jones *v.* Broadhurst, 9 C. B., 173; Randall *v.* Moon, 12 C. B., 261.

The court, in the case of Johnson *v.* Kennion, 2 Wils., 262, held that the holder could recover the whole amount from the acceptor. In Bacon *v.* Searles this decision was commented upon; 1 H. Bla., 88.

The amount payable, and the re-exchange, or rate of exchange chargeable, are matters of evidence.

Code de Commerce, Art. 159.—All parties to a Bill, even the grantor of an *aval*, may take up a Bill (*par intervention*). Subject to the rights of the holder and antecedent parties.

Italian Code, 244, *Spanish* Code, 526, concur; so also the Belgian Law, 49 (May, 1872).

SECTION 52.—*The rights of the holder of a Bill of Exchange to claim re-exchange.*

German Code.—Art. 52. The directions contained in Arts. 50 and 51, sub-sections 1 and 3, do not exclude an allowance in case of re-exchange on a foreign country, where the rate of exchange is higher than at the former place.

English Law.—See preceding Sect. 51, Byles on Bills, p. 255.

Code de Commerce, 177, 178 (*Du Rechange*).—An account of expenses must accompany any claim for re-exchange (Art. 180); but cumulative re-exchanges are not allowed. Interest is only chargeable (Art. 184), with expenses added, after action brought.

Italian Code, s. 283; *Spanish Code*, 549, concur with the French Law. So also the Belgian Code (72 and 81).

In the United States of America the rule varies according to the law of each State.

SECTION 53.—*Rights of holder for reimbursement of expenses.*

German Code.—Art. 53. The party claiming payment may reimburse himself for the amount due on a Bill by re-drawing, or by a re-draft upon the person liable, adding the charges of brokerage and stamp to that of re-exchange. The draft drawn must be at sight, and payable to a third person (*a drittura*).

English Law.—The remedy, in the event of dishonour, is on the Bill itself; the law of England does not recognise a right of reimbursement by re-drawings, though in banking circles such a custom is said to prevail; Byles, 416; Suse *v.* Pompe, 30 L. J., C. P., 75; Story, ss. 397, 399.

Code de Commerce.—Arts. 177 and 178. The Bill is returned with *compte de retour* (Art. 180) affixed. Most of the Continental Codes agree in this respect with the Code de Commerce. Italian Code (264), Spanish Code (549)., the Belgian Law (73, May, 1872), allow reimbursement of all expenses, including re-exchange.

SECTION 54.—*Rights of person paying a Bill to claim a statement of account of expenses.*

German Code.—Art. 54. A party chargeable is only liable to pay, on delivery to him of the Bill, protest, and a receipted account of the expenses incurred, including re-exchange.

English Law.—Formerly a receipt was not deemed absolutely necessary; but the 43 Geo. 3, c, 126, s. 5, and the 33 and 34 Vict., c. 97 (Schedule, Receipt), provide that a discharge must be given. As to the delivery up of the Bill itself (save to the acceptor), this is not necessary.

Code de Commerce.—Arts. 180, 181, provide for a "compte de retour, frais de protêt et autres frais légitimes."

Italian Code (267), Spanish Code (551), the Belgian Law (76, May, 1872), concur in this respect with the French Code.

SECTION 55.—*Right of an indorsee who has satisfied antecedent parties, to cancel indorsements.*

German Law.—Art. 55. Each successive indorsee, who has satisfied one of his antecedent indorsers, may cancel his indorsement and all subsequent indorsements.

English Law.—The right of cancelling the name of an indorser on payment of a Bill is an inherent Common Law right. In how far a holder may cancel prior indorsers signatures depends on the circumstances of each particular case; Byles, p. 154.

French Law.—Pardessus, No. 348; Nougier, No. 691. An indorser may, after default in payment, cancel (*bifer*) his signature, or those of posterior indorsers. In this respect the Italian and Spanish Law concur.

CHAPTER IX.

OF INTERVENTION.

SECTION 56.—*Acceptance for honour; intervention; duties of holder to apply to the in-case-of-need address.*

German Code.—Art. 56. Where a Bill of Exchange contains an in-case-of-need address, in the event of non-acceptance before security can be required, acceptance at the "in-case-of-need address" must be demanded. Where there are several in-case-of-need addresses, that in-case-of-need addresses has to be preferred which relieves the greatest number of parties liable upon the Bill from providing security.

English Law.—By custom merchant, a foreign Bill of Exchange must be presented to the party whose name in the "in-case-of-need" address is stated on the Bill itself. The party so named is in reality more an alternative drawee than an accepter for honour. Inland Bills need not, it appears, be presented to a party named as "*au besoin*"—in case of need.

Geralopulos Wieler, 10 C. B., 690. As to the necessity of protest, see Story, ss. 121, 122, 255.

Chitty on Bills, ch. 5, p. 175, and Story on Bills, s. 65. Both these authorities maintain that the holder is bound to present to the person named "in the case-of-need address;" he may accept and pay, according to foreign law, even without protest.

An indorser may put in the indorsement the words "*au besoin.*"

Code de Commerce.—Art. 126. The 159 Art. of the Code concurs with the German law; the Belgian law, also the Spanish Code (Arts. 528, 529), agree with the French law.

SECTION 57.—*Right of holder of a Bill of Exchange to refuse acceptance of party named as an in-case-of-need address.*

German Law.—Art. 57. The holder of a Bill of Exchange is not compelled to take an acceptance for honour by one whose name is not included in the addresses in "case-of-need" on the Bill itself at the time when he took the same.

English Law.—An acceptance *supra protest* must be always by a third party, who is not named on the Bill itself. In no case is a holder compelled, unless he has received the Bill with that condition attaching, to take such acceptance, as it is no part of his contract for him to do so; Mutford v. Walcott, 12 Mod. 410; Pillan *v.* Van Nicrop, 3 Burr, 1663; Story, s. 122; Bayley on Bills, *ib.* 6, s. 1, p. 176, 179; Chitty on Bills, p. 243.

Code de Commerce.—Arts. 126, 128. The in-case-of-need person must be named in the body of the Bill at the time it was received. The Belgian Law agrees with the Code de Commerce; so also the Italian Code, 213, Spanish Code, 526. The rule is one well established, that a holder is only bound to notice the addresses on the Bill at the time he acquires it. Heineccius (De Camb., cap. 6, s. 9, p. 54) terms this, "*Sopra protesto.*"

SECTION 58.—*Duties of acceptor for honour, his liability to give notice to antecedent party or parties.*

German Law.—An acceptor for honour is compelled to

have the protest, on payment of expenses, delivered to him; he must note on the protest, "acceptance for honour." He is obliged to inform the person, on transmitting protest, for whose account he intervenes; of the fact that he has accepted for honour; and he must post such notice within two days of the date of protest. Where he fails to do this, he becomes liable for any damages caused by his neglect.

English Law.—An acceptor *supra protest* must state, before noting, and declare that he accepts for honour of the party named in the protest. A general acceptance, without naming for whose account acceptance is made, is deemed an acceptance for account of the drawer; 6 & 7 Will. 4, c. 58; Bayley, 6th Ed., 181; Chitty, 165.

It appears that protest in the case of foreign Bills of Exchange is necessary.

Notice to the party for whom the acceptor *supra protest* intervenes is, it appears, not required (Beawes, p. 47), though possibly, should damages result by such neglect, it would be difficult to enforce repayment from the person for whose honour acceptance has been made. Story (s. 123), however, says that an acceptor *supra protest*, upon giving *proper notice* (and on due payment), has his rights over against the parties to a Bill so paid, who are liable to the same persons; Bayley on Bills, ch. 6, s. 1; Chitty on Bills, ch. 8, p. 382.

Code de Commerce, Art. 127.—The French law agrees with the German code, Art. 127 providing that, "L'intervenant est tenu de notifier, sans délai, son intervention à celui pour qui il est intervenu." The Belgian (18), Spanish (528), and Italian Codes concur with the Code de Commerce.

SECTION 59.—*Mode of determining for whose account acceptance for honour is made.*

German Code, Art. 59.—Where an acceptor for honour has omitted to state in his acceptance for whose honour he has accepted a Bill of Exchange, the drawer is deemed to be the person for whose honour he accepts a Bill.

English Law.—A general acceptance for honour, without stating for whose account, is deemed, as already stated, to be for account of the drawer; Byles, 266; Chitty, 9th Ed., 544; Story, s. 123.

Code de Commerce (Art. 126), Italian Code (Art. 213), Spanish Code (Art. 526), concur with the English and German law.

SECTION 60.—*The rights and liabilities of an acceptor for honour.*

German Code.—Art. 60. The person accepting a Bill of Exchange for honour becomes liable as against all parties subsequent to the one for whose account acceptance has been made. The liability thus incurred becomes discharged, unless the Bill of Exchange thus accepted be presented to the acceptor for honour within (at the latest) two business days from due date.

English Law.—Acceptance *supra protest* is not an engagement to pay in any event, but it is only a collateral agreement, being in fact conditional on the drawee failing to pay. Lord Ellenborough, in the case of Hoare *v.* Cazenove, 16 East, 391, held that it amounted to an engagement to pay "on dishonour being notified, by protest, to the person who has accepted for honour."

The 6 and 7 Will. 4, c. 58, enacts that "presentment shall not be necessary until the next day;" Story, s. 125;

Byles, 265, 266. The 2 & 3 Will. 4, c. 98, provides for protest in the case of Bills of Exchange payable at a place other than that where drawn.

Code de Commerce, 126, 127, 128.—After protest, the dishonour for non-payment being stated in the protest. payment *supra protest* may be made.

Italian Code, Art. 213; Spanish, Art. 526; Belgian Law, Art. 17 (May, 1872).

SECTION 61.—*The law of foreign States requiring security, even where acceptance for honour has been made.*

German Code.—Art. 61. Where a Bill has been accepted by a party named in a case-of-need address, or some other intervening person, neither the holder nor any subsequent person has a right to demand security as upon a Bill dishonoured for non-acceptance.

English Law.—An *in-case-of-need* acceptance is, as already stated, alternative in its character, and the holder who takes a Bill subject to this condition cannot proceed against the drawer or other parties for non-acceptance until he has complied with the same, but he is compelled to apply to the person so named in the first instance; Story, s. 212; Chitty on Bills, c. 5, p. 188 (8th ed., 1833). The rule as to finding security in the event of dishonour for non-acceptance is unknown to the Law of England.

Code de Commerce, "De l'acceptation par intervention," Arts. 126 to 128, substantially agrees with the German Law.

The Italian Code (Art. 213), the Spanish Code (Art. 526), agree with the French Law.

SECTION 62.—*Payment for honour (by intervention), period in which a Bill of Exchange has to be presented.*

German Code.—Art. 62. Where a Bill which has not been retired by the drawer, or a copy of the same, contains in-case-of-need addresses, or an acceptance for honour which directs payment at the place of payment, the holder is bound to present the Bill, within two working-days from its due date, at all of such case-of-need addresses. The acceptor for honour, and also the holder, must state in his protest the result of such presentation in case of refusal to pay, or notify the same in an appendix affixed to the protest. Where he omits to do this, he sacrifices his right as against the persons named, or for whom acceptance by honour has been made. Where the holder refuses payment for honour by another person who intervenes, he sacrifices his right of redress as against all other parties subsequent to the party for whose honour such intervention was proffered.

English Law.—The 6 & 7 Will. 4, c. 58, enacts that presentment shall not be necessary until the next day, in the case of an in-case-of-need acceptance.

Chitty (c. 20, p. 350, 351), as to payment *supra protest*, says, "No person should pay for the honour of a particular party to it, before it has been duly protested for non-payment by the acceptor." In all cases of payment for honour the payee must follow the custom of merchants; Vandewall *v.* Tyrrell, 10 C. B., 707, c. 710.

Code de Commerce, Arts. 158, 159. — Protest is necessary, and notification of the facts on the protest itself.

The Italian Code (244), Spanish Code (526), Belgian Law, 49 (20th May, 1872), concur with the Code de Commerce.

SECTION 63.—*Rights acquired by person paying a Bill of Exchange for honour.*

German Code—Art. 63. The person paying a Bill for honour is entitled to demand its delivery, copy of the protest, and an account of expenses. By virtue of his payment for honour he acquires all the rights of a holder (Arts. 50 & 52), as against the party for whose account payment for honour has been made, and against all antecedent parties.

English Law.—A party paying a Bill of Exchange *supra protest* is entitled to recover from the party for whose account he has made the payment, and others against whom such party had a right of recourse; Bayley on Bills, 6th ed., 318; Byles, p. 270. In the case of Mertens *v.* Winnington, 1 Esp. 113, it was laid down that a party who pays generally for honour, but without protest, a Bill indorsed in blank may sue any one of the antecedent parties on the Bill; *Exp.* Wylde, 30 L. J., Bankruptcy.

Where, however, payment is intended to be made under protest, it is essential that protest should be made before payment, and that the name of the person for whom such payment is made be mentioned on the document itself.

The *Code de Commerce* (Arts. 158, 159), in its leading features, concurs with the German Code. *Spanish Code*, Arts. 526 and 533, slightly varies the rule of the French Code, giving a right of action against the drawer—and where the drawee has funds, against him also. The Italian Code (Art. 241) and the Belgian Code (L. 49, May 20, 1872) follow the French Code.

SECTION 64.—*The rule, where several persons intervene, as to who has the preference to accept or pay for honour.*

German Code.—Art. 64. Where several parties offer to

intervene for honour, that person has the preference by whose intervention the greatest number of parties are discharged. A person who has intervened, notwithstanding that it appeared on the Bill or on the protest that some one else, to whom he was bound to yield the preference, was ready to redeem such Bill, has no right of recourse against those indorsers who might have been discharged by the payment for honour by such other intervener for honour.

English Law.—This is a very useful rule, but, strange enough to say, it has no application in English Law. As, however, the object of acceptance and ultimate payment *supra protest* is to save to the holder his rights, such as he would have enjoyed had the Bill been paid, no doubt the acceptor and payer *supra protest* steps into his place; and in this view Beawes (p. 47) concurs. Indeed, Byles (p. 269) says, "By acceptance *supra protest* the party for whose honour it was made, and all parties antecedent to him, become liable to the acceptor *supra protest* for all damages which he may incur by reason of his acceptance."

Code de Commerce, Art. 159, agrees with the German Code; so also the *Spanish* (526, 533), the *Belgian Law*, and the *Italian Code*, 244. See Coût de protêt, Nougier, Nos. 1,333, 1,334.

SECTION 65.—*Rights of holder and acceptor, or person paying a Bill of Exchange supra protest, to recover expenses incurred.*

German Code.—Art. 65. The acceptor for honour, who is prevented from paying because the drawee or some other intervening person has paid, is nevertheless entitled to demand from the person who has paid the Bill of Exchange a legal commission of $\frac{1}{3}$ per cent.

English Law.—No parallel rule exists. It may be, however, assumed that an acceptor for honour (*supra protest*) is entitled to recover any expenses he has been put to, for protest or otherwise.

Code de Commerce, Arts. 158, 159, gives a right to recover expenses: the drawer may at maturity pay the draft he has originally refused to accept, and it agrees with the German Code in this respect; the rate of commission is, however, not given. The Italian Code (224), the Spanish Code (526), the Belgian Law (L. 49, 29th May, 1872), all concur with the French Code; the rules adopted in making up charges varying greatly.

CHAPTER X.

DUPLICATES—COUNTERPARTS.

SECTION 66.—*Circumstances under which the drawer of a Bill of Exchange is obliged to furnish duplicates or counterparts.*

German Code.—Art. 66. The drawer of a Bill of Exchange is obliged to hand to the person to whom it is remitted, when demanded, duplicates of such Bill. The duplicates must be expressed on the face of the Bill of Exchange as first, second, or third of exchange, &c. In the case of omission to state this, each Bill shall be deemed to be a *sola* Bill of Exchange. An indorsee may likewise claim a duplicate of a Bill of Exchange; he must, however, apply to his immediate antecedent indorser, who in his turn has to claim such duplicate from his preceding indorser, until the request reaches the drawer. Each indorsee may demand from his prior indorser that the indorsements prior to him shall be repeated on each duplicate or counterpart of a Bill of Exchange.

English Law.—Sets or parts of Bills of Exchange. In the case of a foreign Bill, a drawer, or other person making delivery, is bound to deliver as many *exemplars*, or parts, as may be needed. It is conceived, however, that as each part has to be stamped, the party applying must provide the stamp; 33 & 34 Vic. c. 97. Each duplicate part ought to embody a condition that it shall not be paid unless one of the other parts has been paid; Straker *v.* Graham, 4 M. & W., 721. By general usage, indorse-

ment has to be provided on duplicates; Byles, p. 390; Chitty on Bills, ch. 5, p. 175. The omission to insert the reservatory clause may, in some cases, compel payment a second time; Chitty on Bills, ch. 5, p. 176. Mere error in omission, however, it appears will not make a party liable, where on the face of the Bill it is apparent that duplicates have been issued; Davidson *v.* Robertson, 3 Dow., 218, 228; Bayley, 6th Ed., 30. Pothier, Lettres de Change, p. 111, deals exhaustively with this question. Story, s. 67.

French Law.—Nougier, Des divers exemplaires d'une Lettre de Change, t. i. ch. iii., p. 176, No. 205, 207; as to copies, No. 209; and *vide* cases cited by him. See also Jean Trenchant, Discourses des Changes, p. 352. The Code de Commerce does not provide in terms for the issue of counterparts, but custom and judge-made law have authorised their issue on application of the holder; in this respect the Italian and Spanish Law concurs with the French Law.

SECTION 67.—*Liability of an acceptor or indorser of a Bill on more than one part or duplicate.*

German Code.—Art. 67. The payment of one of the duplicates is a discharge of all the others; a continuing liability on the remaining duplicates is deemed to exist, however, as against—

(1.) The indorser who has indorsed several copies to different persons, and all subsequent indorsers whose signatures appear on such duplicates uncancelled, subsequent to the date of payment of a Bill of Exchange;

(2.) The person who has accepted several duplicates

of the same draft, which have not been withdrawn at the time of payment.

English Law.—An indorser who signs the counterpart of a Bill which does not contain the annulling clause is liable to a *bonâ fide* holder (Holdsworth *v.* Hunter, 10 B. & C., 449), that is, one who takes without notice, but not when on the face of the instrument a contrary intention appears; Davidson *v.* Robertson, 3 Dow., 218, 228.

The acceptor should only accept one counterpart, for otherwise he may be held liable; he ought not to pay without taking back the accepted part or duplicate; Byles, 392. Story (s. 226) says, that the greatest inconvenience may arise unless the whole set or parts be delivered, as a *bonâ fide* holder of any one of the set which has been accepted might recover from the acceptor. Indorsement of a duplicate after due date might, it is conceived, create on the Bill, as between the parties contracting, a fresh liability, unless stopped for want of a stamp.

Code de Commerce, 147, 148. 151, Cour de Cassation, 4 Avril, 1832, S. Y. 321, 292, Nougier, No. 215, Code Civil, Arts. 1235, 1276, 1378, are in force.

Italian Code (232), *Spanish* (503) and *Belgian Law,* 38 (May, 1872), substantially agree with the French Code.

SECTION 68.—*Rule as to marking on a duplicate or counterpart that it is a counterpart.*

German Code.—Art. 68. The person who has forwarded several duplicates of a Bill of Exchange for acceptance must mark on the counterparts at whose address the duplicate forwarded for acceptance has been deposited. The omis-

sion to do this does not, however, destroy the validity of a Bill of Exchange. The depositee of a duplicate sent to him for acceptance is bound to deliver the same to the person who shall prove himself to be the holder, indorsee, or otherwise entitled to demand the Bill deposited.

English Law.—The ownership, the property in a Bill, rests on an independent basis; hence a depositee of an accepted part of a set of Bills of Exchange is liable in trover to the person having a legal title to the same. In how far a notice, as customary among merchants, written on the Bill itself, is evidence to the contrary is necessarily a mixed question of law and of fact for the court and jury to decide. No decisions, it appears, have been come to on this point in our courts. See the case of Ralli *v.* Dennistown, 6 Exch., 483.

Code de Commerce (Arts. 147, 148), Copies, Duplicates; Nougier, Nos. 204, 219, 1117, *Duplicat.* The French law agrees in almost all its essential features with the German law. The Italian and Spanish Codes concur.

SECTION 69.—*Rights of a holder of an indorsed duplicate of a Bill of Exchange.*

German Code.—Art. 69. The holder of a duplicate which states at whose address the duplicate sent for acceptance is lying cannot demand better security for non-acceptance or non-payment until he shall have entered protest on the following grounds:—

(1.) That the duplicate sent for acceptance had not been delivered to him by the depositee;

(2.) That neither acceptance nor payment of the duplicate could be obtained.

English Law.—No cases have arisen under this heading;

it is, however, apprehended that an action would lie against the person in possession of an accepted Bill of Exchange.

Code de Commerce contains no express proviso regarding the rights of a holder; but the Civil Code gives a remedy for recovery of personal property.

The Italian and Spanish law concurs with the French law.

SECTION 70.—*Law regulating rights of holder of a Copy of a Bill of Exchange.*

German Code.—Art. 70. A copy of a Bill must be an exact transcript of such Bill, and must include all indorsements and other *indicia*, and conclude with the words, "*until here*," or "*so far*," "*copy*," or some other equivalent words.

The omission of such words shall not, however, deprive an indorsed copy of its character of a Bill of Exchange.

English Law.—It is always desirable to insert the word "copy" on the copy of a Bill itself; for, where this is omitted, the person circulating a Bill might otherwise become liable as upon an original Bill; Byles, p. 392. The practice of substituting a new part, without indorsements, in the case where a Bill has come back into the hands of a former holder is a very unsafe practice. The holder may, where this is the case, at any time be deprived of his remedy against the acceptor. See the case of Ralli *v.* Dennistown, 6 Exch., 483, cited above, and C.B. Pollock's judgment.

Code de Commerce.—Art. 147. Nougier, No. 209, says, "*Une copie ne remplace un duplicata qu'autant qu'elle porte toutes les signatures originales.*" A copy ought to contain the words, "*Copie de seule de change,*" No. 210, *ibid.* See Harrander; Thuret. Dalloz (anc. édit., t. 6,

p. 569) upholds the validity of an indorsement on a copy; Pardessus, Nos. 342 to 399.

The *Belgian Law* (57) and *Italian Code* (232) agree with French Code.

SECTION 71.—*Liability of an indorser of a Copy of a Bill.*

German Code.—Art. 71. Every original indorsement written on a copy renders the indorsee liable similarly as if he had indorsed the original Bill.

English Law.—Chitty on Bills: Bills drawn in Sets, p. 111, 112; Byles, 12th ed., p. 392. The employment of a copy, for the purpose of effecting transfer by indorsement, is a matter of usage amongst merchants, and valid, though not embodied in any statute.

Code de Commerce contains no express provision in this respect; but M. Nougier (Des Lettres de Change, No. 151) gives the cases decided in the Cour Royale d'Appel, 14 Janvier, 1830, Courtet et Chevallier, reported, Dalloz, Répert. Meth. (anc. éd.), "Effets de Commerce," in which the court upheld the rights of the holder of a copy duly indorsed, amongst other reasons, on the grounds of a well-established custom of merchants.

The custom of bankers and merchants thus recognised by French and German law is all but universal. In Italy and Spain the same rule is recognized; so also in Belgium.

SECTION 72.—*Liability and duties of the depositor of an original Bill of Exchange as against the holder of a counterpart or copy.*

German Code.—Art. 72. The depositee of an original Bill is obliged to deliver the same to the holder of a copy

containing one or more original indorsements, provided the indorsee can identify himself as the rightful holder. Where the original Bill is not delivered up by the depositee to the holder, the holder being only possessed of a copy, he is only entitled to claim security for the principal sum and costs after protest made in accordance with the 6th Art., No. 1; and to demand payment only, after the due date named in the copy, from those persons whose names appear as original indorsers on the copy itself.

English Law.—An action for detinue, it is thought, would lie, by the indorsee of a copy of a Bill of Exchange, for delivery of the accepted original part; but a copy would not in itself give a right, though available as evidence of title.

The rules laid down in this Article have, however, no analogous application in the English law.

Code de Commerce contains no express provision on this point; but customs merchant, supported by the decisions of the French courts (see Sec. 71), have clothed a holder of an indorsed copy with all the rights of his transferee, and *a fortiori* with the right to claim original. The Italian and Spanish law concurs with the French rule or custom.

CHAPTER XI.

OF THE LOSS OF A BILL OF EXCHANGE, AND ITS CONSEQUENCES.

SECTION 73.—*Rights of holder of a lost or stolen Bill of Exchange: his right to claim payment.*

German Code.—Art. 73. The holder of a lost Bill of Exchange may demand its amortization in a competent court of law within the jurisdiction of which the Bill is made payable. After the commencement of proceedings for amortization the holder may demand payment from the acceptor in those cases in which he has furnished security. Unless such security has been provided, he is only entitled to demand deposit of the sum stated on the Bill itself in some public office authorized to receive the same.

English Law.—The only remedy for the holder of a Bill of Exchange which is either indorsed in blank or passes by delivery, in case of loss, is by equitable relief; no action lies (Gower & Clay, 9 Exch. in error, 604) at the instance of the loser against any one of the parties to the instrument or upon its consideration. But if a Bill or Note, not negotiable, be lost, it has been suggested (Price *v.* Price, 16 M. & W., 243) that an action would lie. Thus also, in Poole *v.* Smith (Holts, N. P., 144), it was held that loss after action brought did not prevent the amount being allowed by the Master.

The Judicature Act, it is conceived, would bring within the Equitable Rule all cases of loss of a Bill of Exchange or Note.

As against the acceptor, the 17 & 18 Vict., c. 125, s. 87, provides that "the loss of such instrument shall not be set up as a defence to an action on the same, provided an indemnity is given to the satisfaction of the Court, Judge, or a Master against any eventual claims of any other person upon such negotiable instrument."

The rule regulating amortization, or bringing the amount into court, has no parallel in the English law. On this interesting question see Byles, chap. i.—xxviii., pp. 375 to 382; Chitty (1859 ed.), pp. 178, 179; Story, s. 384.

Code de Commerce.—Arts. 152, 153, 154. As to security, Arts. 151, 152. The *Belg.* L. (Art. 42, 20 May, 1875) and the *Italian* Code concur with the French Law Code. The *Spanish* Code, Arts. 507, 508, and that of the Argentine Conf., 833, however, mention deposit into a *Caisse de Consignations* as necessary.

SECTION 74.—*Rights of a bonâ fide holder to claim delivery up to him of a Bill of Exchange.*

German Code.—Art. 74. The holder of a Bill of Exchange who has, pursuant to Art. 36, identified himself can only then be compelled to deliver up the Bill where he has *malâ fide* acquired the same, or where gross carelessness is shown to have taken place in the mode of acquisition.

English Law.—The question of *mala fides,* dealt with under this heading, is one of evidence. Acquisition of a Bill or Note, with notice of fraud, vitiates the holder's title. In case of fraud, equity will relieve (Hodgson *v.* Murray, 2 Sim., 515), and compel delivery up of the Bill to the rightful owner. Trover (see Judicature Acts as to

actions in trover) for a lost Bill is maintainable as against the finder, or against any person taking under him; but the possession must be tainted with fraud; Down *v.* Hatting, 4 B. & C., 330; Lovell *v.* Martin, 4 Taunt., p. 799; Chitty on Bills, 10th Ed., p. 179. *Mala fides*, as laid down by Lord Tenterdon in Gill *v.* Cubitt, 3 B. & C., 466, may be put thus:—"Whether the party who took the lost or stolen instrument took it under circumstances which ought to have excited the suspicion of a prudent and careful man." In the case of Baxendale *v.* Bennett, 44 L. J., Q. B., App., p. 624, it was held that on a Bill not filled up, and accepted in blank, and subsequently stolen, the acceptor was not liable.

Code de Commerce is silent on this question. M. Nougier, F. i., p. 235, expresses his astonishment that the Code is silent in regard to frauds and forgery; "*Sur les faux qui se glissent dans une lettre de change,*" . . *Ibid.*, p. 288: "*De la fausse signature du tireur.*" The question of forgery, notice, *mala fides* in the acquisition of a Bill of Exchange, are matters of evidence. The Italian and Spanish Codes are likewise silent, the question being one referred to the tribunals in each case to determine under the Civil Codes of those countries.

CHAPTER XII.

FORGERY: FRAUDULENT ALTERATION OF A BILL.

SECTION 75.—*Effects of forgery or alteration of a Bill of Exchange on parties to the instrument.*

German Code.—Art. 75. Even where the signature of the drawer is forged or has been falsified, a true acceptance and true indorsement retain their validity as constituting part of a Bill of Exchange.

English Law.—Our law substantially agrees with the German Code. Acceptance admits the signature and capacity of the drawer, and the subsequent discovery of forgery is no defence as against a *bonâ fide* holder, without he has had notice of the forgery; Price *v.* Neal, 3 Barr., 1354; Phillips *v.* Im-Thurn, L. R. 1, C. P. 463; Story, s. 113; Bayley on Bills, ch. 6, p. 171. An admission that the signature is that of the drawee estops him from denying it. Payment to an indorser, whose name is forged, by the acceptor does not, it appears, estop him from denying his liability to pay. The acceptor is not presumed to know the indorser's signature; Smithy *v.* Chester, 1 Term. R., 654. Though a forgery cannot be ratified (Brook *v.* Hook, 40 L. J., Exch., 50), the giving currency to a forged Bill estops the drawee from exonerating himself; Morris *v.* Bethell, L. R. 5, C. P. 47.

No title is acquired, even in the hands of a *bonâ fide* holder, by a forged transfer or indorsement. Subsequent parties as between themselves retain their remedy on the Bill; but the acceptor is not obliged to pay, and a Court of Equity

will restrain the holder from suing him; Chitty on Bills, 182, 183.

Code de Commerce, 153, C. C. 2179. The varying or changing of a material part of an acceptance vitiates a Bill of Exchange, the same as in a case of forgery. Where the indorsement has been altered, two rules apply:—1. Where the forgery has been committed by the thief, unless opposition be lodged, the acceptor may pay his acceptance. 2. Should he pay to the holder, he acquits himself of further liability; but, if the acceptor fails in the meantime, the holder has only a remedy against the drawer and other indorsers.

The Belgian Law, Art. 39 (May, 1872), concurs; protest being, however, made the day after the due date of a lost Bill.

The Italian Code also agrees, the guarantee being discharged in five years.

The Spanish Code, 463, substantially agrees.

SECTION 76.—*Liability of drawer and indorser in case of a forged Bill of Exchange.*

German Code.—Art. 76. All the indorsers and the drawer whose signatures are not forged remain liable on a Bill of Exchange both in their persons and goods, even though the Bill may have been put into circulation with a forged or falsified acceptance or forged or falsified indorsement.

English Law.—Each indorser admits, by his indorsement, the genuineness of the signature of the drawer and all antecedent indorsers; Critchlow *v.* Parry, 2 Comp. R., 182; Story, s. 412; Bayley on Bills, ch. 11, pp. 462, 463 (5th ed.); Byles, p. 435. See the case of Macgregor *v.* Rhodes, 25 L. J., Q. B., 318.

Code de Commerce.—Art. 140: "De la solidarité." Nougier, No. 319, says: "L'endosseur ne garantit que la sincérité de la signature de son cédant, et non celle des endosseurs antérieurs et du tireur."

Italian Code (225), *Spanish Code* (473), *Belgian Law* (30) 20 May, 1872, concur with the French Law.

CHAPTER XIII.

LIMITATION OF ACTION—PRESCRIPTION.

SECTION 77.—*The period of prescription as regards the acceptor of a Bill of Exchange.*

German Code.—Art. 77. The right of action on a Bill of Exchange as against the acceptor is barred in three years, computed from the due date of the Bill.

English Law.—Six years bars the remedy for recovery on a Bill or Promissory Note (Statute of Limitations, 21 Jac. I., c. 16, supplemented by the 3 & 4 Will. IV., c. 42). The time from which the six years are reckoned to run is the due date of the Bill itself, payable at a certain period after date (Wittersheim *v.* Lady Carlisle, 1 H. Bl., 631); if by instalments, from date of default (Hemp *v.* Garland, 4 Q. B., 519); on a Bill at sight, not until presentment (Holmes *v.* Herrison, 2 Taunt., 323). The Scotch Law gives six years on the Bill; the action on the debt being, however, only barred in forty years.

Code de Commerce, Art. 189, gives five years as the time of limitation. The *Belgian Code*, 82, concurs; whilst the *Spanish Code*, Art. 557, gives only four years. The *Italian Code*, 282, gives five years.

SECTION 78.—*Period of prescription as against the holder in regard to the drawer and antecedent parties to a Bill of Exchange.*

German Code.—Art. 78. The rights of recourse by the

holder against the drawer and the other parties to a Bill of Exchange is barred within the following periods:—

(1.) In three months' time in the case of a Bill payable in Europe, save the island of *Faroe;*

(2.) In six months' time where a Bill is payable on the sea-board of Asia, Africa, or the sea-board (litoral) of the Mediterranean and Black Sea, or in any of the islands within such seas;

(3.) In eighteen months' time where a Bill is payable in a non-European country or island or in the Faroes.

The time of limitation as against the holder runs from the day of the drawing up of protest.

English Law.—None of the rules contained in this article find any application in the English Law. The 21 Jac. I., c. 16, referred to in the preceding Section, is uniform in its application to Bills of Exchange and Promissory Notes: all parties to such instruments are liable for six years.

Code de Commerce, Arts. 160, 189, sets forth the various periods within which proceedings must be taken against the acceptor; otherwise loss of recourse. See "Manuel de Droit Commercial français et étranger;" Hoechster, Sacré et Oudin, p. 678 *et seq.,* for the periods presented by different Codes.

Italian Code, 282, 283, the time is five years.

Spanish Code, 489, 490, 557, and 569, the time is four years.

Netherlands, Code of, 206, 207, and 209, prescribes ten years.

Code de Commerce, 189, five years.

Portuguese Code, 323 and 441, the period is five years; United States of America, six years.

SECTION 79.—*Period of prescription (limitation of action) of right of recourse of the indorser of a Bill of Exchange as against the drawer and antecedent parties.*

German Code.—Art. 79. The right of (recourse) action of the indorser (Art. 51) against the drawer and other antecedent parties to a Bill is barred—

(1.) In three months' time where the party demanding payment resides in Europe, save the island of Faroe;

(2.) In six months' time where the party bringing the action resides in any of the sea-board countries of Asia, Africa, the Mediterranean, or of the Black Sea, or on one of the islands between these seas;

(3.) In eighteen months' time where the party bringing the action (recourse) resides in any other non-European country or island, or in the Faroes;

The time of prescription runs as against the indorser from the day on which, before an action on the Bill of Exchange has been brought against him, he has paid the same; in all other cases from the date of service of legal process.

English Law.—The 1st, 2nd, and 3rd Sub-Clauses to this article of the German Law have no application in the English Law. The time of prescription runs on a Bill or Note from the time that the action first accrued, even if at that time the action was utterly fruitless; Emery *v.* Day, 1 C. M. & R. 245; Byles, p. 344. The day on which the time commences to run is computed from the day on which a Bill is refused acceptance; Whitehead *v.* Walker, 9 M & W., 506: or from the day on which the Bill or Note becomes payable; Webster *v.* Kirke, 17 A. B. 947; Chitty on Bills, 10th Ed., 388.

Code de Commerce, Art. 189, gives five years. Code Civil, Arts. 2,260, 2,261, says: "Par jours et non par heures;" Nougier, Nos. 1,604 to 1,613. Italian Code, 282, 283, five years (*vide* Sect. 78 for the various periods of prescription).

SECTION 80.—*Period of limitation of action, when it ceases to run.*

German Code.—Art. 80. The time of prescription ceases to run from the day of inception of legal proceedings (Arts. 77 and 79); but only in regard to such party to a Bill against whom proceedings have been instituted. Nevertheless, notice by the defendant that he intends to resist the claim shall be deemed to take the place of legal proceedings.

English Law.—An action must have been commenced in a court of competent jurisdiction in order to prevent the time of limitation to cease running. Before the Judicature Acts, 1873 and 1875, the practice was to renew a writ every six months (15 & 16 Vict., c. 76, ss. 11 & 12). The practice under the former Acts has now been altered, one year being substituted for six months, and leave being needed for further renewal (Ord. viii., R. i.) Once before the court, the right never dies until the record is taken off the file of the court.

Code de Commerce, Nougier, Nos. 1,614 and 1,605 (*poursuite juridique*).—"The fact of judicial proceedings having been instituted interrupts the time of prescription. This rule is upheld by all the Codes of the different Continental States.

CHAPTER XIV.

THE LIABILITY INCURRED UNDER A BILL OF EXCHANGE BY A DRAWER, ACCEPTOR, AND INDORSER.

SECTION 81.—*Parties liable on a Bill of Exchange.*

German Code.—Art. 81. The liability on a Bill of Exchange, which is *in solidum*, attaches alike to the drawer, acceptor, and indorser, as also to any other person who has either signed a Bill or a copy thereof, either as an acceptor or indorser; this rule applying even where the party liable is only described as a guarantor (*par aval*). The liability (*in solidum*) of any of such parties extends to all which a holder of a Bill of Exchange has a right to claim by reason of the non-fulfilment of any obligation arising out of a Bill of Exchange.

The holder of a Bill of Exchange may claim payment of the whole sum from any one of the parties to a Bill; it rests with him to elect any one or more as liable on the Bill, and pursue his remedy against one or more of them.

English Law.—A *bonâ fide* holder of a Bill of Exchange or Promissory Note, that is, the person who is entitled at law to receive payment, is the person who may sue upon a Bill or Note. He may pursue his remedy against all the other parties, or against as many as he thinks fit; Chitty on Bills, p. 364.

The rule regarding "*aval*" has no application, save as a guarantee, in the English Law. A guarantor of a Bill by

a separate instrument or writing on the Bill itself must be pursued upon his guarantee. Presentment for payment of a Bill, it appears, is not necessary to charge a guarantor; Byles, p. 200; Chitty, 178. The law of England requires privity between the person giving the guaranty and the person secured. The doctrine of a continuing credit to unknown persons has no application in English Law. See the cases cited by Chitty, p. 178; Story on Bills, s. 457.

Code de Commerce (Art. 164), *Belgian Law*, 55 (20 Mai, 1875), *Italian Code* (Art. 250), agree with the German Code and the English Law; whilst the *Spanish Code* (Art. 534), and those based on it, provide that once a holder has made his election he must enforce his remedy even to bankruptcy, before he can sue the other parties. The same rule, in part, is recognised by the Roman Dutch Law (Cape of Good Hope, Ceylon, &c.).

Code de Commerce.—Art. 141: De l'Aval. This useful mode of guaranteeing a Bill of Exchange may be written on the Bill itself or on a separate document: the words, "*pour aval*," suffice to bind the party contracting; it has even been held that the mere signature of a party may bind him.

The *Austrian Code*, 81, concurs. The contract "*par aval*" has the effect of rendering the person who undertakes to be answerable liable as under the Bill itself. The Hungarian Law agrees. In the United States of America this liability may be entered into by writing the name of the person accepting to be responsible across the Bill, or by a separate letter or written document.

The Italian Code, 226, the Spanish, 475, the Portuguese Code, 351, agree with the French Code.

SECTION 82.—*Defences to an action on a Bill of Exchange.*

German Code.—Art. 82. A debtor under a Bill of Exchange has only such pleas allowed him, by way of defence, as are permitted by the law of Bills of Exchange, or of which he may avail himself as against the plaintiff himself.

English Law.—Leave to appear and defend is necessary (18 & 19 Vict., c. 67, s. 2.); provided the action is brought within six months after due date, leave will be granted either on legal or equitable grounds, or on facts stated which render it incumbent on the holder to prove consideration. It is sufficient if the affidavit of the defendant discloses the substance of his defence; Chitty on Bills, 366; Byles, 402; Day's Common Law Procedure Acts, 4th ed., p. 382 *et seq.*

Summary execution may be had upon foreign and inland Bills and Notes in Scotland for non-payment against the acceptor, maker, drawer, and all other parties (23 Geo. III., c. 18, s. 55) by registering protest (this must be done within six months); a warrant then issues to levy, or take the debtor's person, after lapse of six days. This process is known by the term of "summary diligence."

Code de Commerce, Arts. 164, 165; Nougier, No. 1122, "*Après l'échéance*," and see Arts. 631, 632; Art. 172, "*De la saisie conservatoire.*" The defences, such as fraud, forgery, set-off (if between the immediate parties), are recognised by the French law. As a rule, none of the Codes of the Continental States permit, save by leave, a defence to be entered in an action on a Bill of Exchange or Promissory Note.

SECTION 83.—*Liability of drawer and acceptor of a Bill of Exchange.*

German Code.—Art. 83. Where the liability of a drawer or an acceptor on a Bill of Exchange has become extinguished by lapse of time (prescription), or because default had been made in the observance of the steps and acts legally required to be done, the drawer and acceptor remain liable only to the extent in which either of them has benefited to the prejudice of the holder. As regards the other parties to a Bill (indorsers), whose liability has been barred, no such right arises.

English Law.—Where a Bill or Promissory Note has been given to a creditor, the debt is not discharged; it is only held to be in suspense, default in payment reviving the debt: the creditor may either sue on the Bill or on his original debt; Byles on Bills, p. 111. But if his right rests on the Bill, he must pursue his remedy on the instrument itself.

Code de Commerce.—Art. 140. All parties, according to the law of France, are liable *in solidum.*

The *Belgian* Law, 30 (May, 1872), *Italian* Code, 225 (unless "*sans garantie*" or other words exempting the indorser from liability), *Spanish* Code, 473, concur with the French Code. The taking of a Bill or Promissory Note, as between the original parties, does not create a *novatio* so as to extinguish the debt.

SECTION 84.—*The law regarding Bills of Exchange drawn or accepted in a foreign country.*

German Code.—Art. 84. The capacity to enter upon a contract by means of a Bill of Exchange is determined by

the law of the country of which the person entering into such contract is a subject. Nevertheless, any person who cannot enter upon such a contract may nevertheless be, by the law of his own country, held liable, if according to the law of the place where the contract is made he is capable of binding himself under a Bill of Exchange.

English Law.—All persons who possess a general capacity to contract may do so by means of a Bill of Exchange or Promissory Note. The law of the place of domicile determines this capacity.

Heineccius de Jur. Camb., cap. 5, ss. 1 & 2, says, "*Nullum est dubium quin cambiare possint, quicunque possunt contrahere, nisi id leges cambiales speciatim prohibeant.*"

Minors, married women, alien enemies, persons of unsound mind, cannot contract by means of a Bill or Note. Even clergymen by Statute Law (43 Geo. III., ch. 84, s. 5, see Chitty on Bills, ch. 2, s. 1), who are prohibited from trading, might, it is thought, be deemed incapable of contracting, at all events to the extent of carrying on a trade by means of Bills or Notes; Story on Prom. Notes, ss. 75, 76; Com. Dig. Capacity, B. 1, D.; Byles, 59; Infants' Relief Act, 37 & 38 Vict., c. 62, s. 1.

Story, Conf. of Laws, ss. 65 & 66, says, "*Qualitas personam sicut umbra sequitur.*"

As a rule, the contracts of infants are either voidable or absolutely void. The time of the *venia ætatis* hence becomes a very important question; but to this rule there are many exceptions,—at all events, in those cases in which the law of the domicile and that of the *situs* conflict. Story, Conf. of Laws, s. 55, 1 Burge Comm. on Col. and Foreign Law, pt. 1, ch. 3, s. 3.

Code de Commerce, 113, 114.—Nougier, Nos. 60 to 79, "De la capacité requise pour intervenir dans la lettre de change."

"Capacité des Personnes, No. 1412. Merlin, Répert. de Jurisprud. V.:" *Majorité*, s. 5 *et seq.*

Italian Code, 199, *Spanish* Code, 434, *Belg.* L. 3 (20 May, 1872), concur with the French law.

SECTION 85.—*The necessary characteristics; the requisites of a foreign Bill, and mode of proceeding on it.*

German Code.—Art. 85. The essential requisites of a Bill of Exchange drawn in a foreign country, as also of every declaration relating to a foreign-drawn Bill, are governed by the law of the place where the act or declaration is made. Where the declaratory acts in respect of a Bill of Exchange made in a foreign country comply with the requirements of the law of Germany, any defect according to the law of the foreign country does not involve the nullity of any subsequent declaration made in Germany. Of equal validity are declaratory acts in regard to Bills of Exchange, by which a person domiciled in Germany contracts with another person likewise so domiciled, where such acts conform only with the requirements of the law of the place of such domicile.

English Law.—An inland Bill of Exchange or a Promissory Note, drawn, made, accepted, or indorsed in the country where accepted or made, is necessarily governed by the law of the place where drawn or made. But in regard to foreign Bills of Exchange very different considerations arise. In the latter case the drawing, accepting and indorsing are governed by the laws of the respective countries where such acts are done or made; Chitty on Bills, p. 116, 117; Story on Bills, s. 131: unless the Bill is payable at another place to that of drawing; then the law of the former place governs; Cooper *v.* The Earl of Waldegrave, 3 Beav. R., p. 283.

The second paragraph of the 85th Art. of the German Code includes those complicated questions of the validity of acts done abroad, which affect the rights of parties so for as concerns the observance of the form and solemnities of contracts, which, as a rule, are governed by the *lex loci contractus ;* Story on Conf. of Laws, s. 260 *et seq.*; Byles, 77 to 90, chap. vi., on the Form of Bills, &c; Story on Bills, s. 137 ; Byles, p. 394, c. 396.

Code de Commerce.—As to indorsement in a foreign country, the Code de Commerce is silent. Nougier (670) holds that, as the Code is silent, *locus regit actum ;* the same rule applying to the form of a Bill, the form of acceptance, of protests, and all acts appertaining to a Bill drawn, accepted and indorsed in a foreign country. The Italian and Spanish Codes are also silent; hence the general principles of law apply.

SECTION 86.—*Acts to be observed for the preservation of the rights of a holder of a Bill of Exchange in a foreign country.*

German Code.—Art. 86. All acts (*conservatoire*) done for the preservation of rights in regard to a Bill of Exchange in a foreign country must be made in accordance with the laws of the country where such acts are done or made.

English Law.—The 2 & 3 Will. 4, c. 98, provides that protest shall be made at the place where a Bill is made payable ; this necessitates that if the Bill is payable in a foreign country the protest must be in the form, and accompanied by the solemnities, acknowledged in such country ; Byles, 261. Story, s. 138, distinctly lays down the rule that the *lex loci* governs ; Fœlix, Confl. de Lois,

Revue Étrang. et Fran., t. 7, 1840, s. 40, c. 50; Story, Confl. of Laws, s. 260.

Code de Commerce (Des Protêts), 173.—Nougier says (No. 1270), "La forme et les effets du protêt sont régis par la loi du lieu où la lettre est payable, c'est-à-dire, du lieu où le protêt est fait; Fœlix, De Droit international privé, No. 72 *et seq.*"

The *Italian* (259) and *Spanish Codes* (573) only provide as to the necessity of having protest made, but are silent as to the general principles governing foreign Bills of Exchange.

CHAPTER XV.

OF PROTESTS.

SECTION 87.—*By whom protest is to be made, and form of protest.*

German Code—Art. 87. Every protest must be made either by a notary or by an officer of a court of law. The presence of witnesses, or of the person who keeps the protocol, is not necessary.

English Law.—A protest should be made by a notary; but where no notary can be obtained, then by a resident of the place where it is made, and in the presence of two competent witnesses. A protest is only necessary in the case of a foreign Bill of Exchange; Byles, 259, 260; 3 Smith, 328, S. C. It appears that the protest of a foreign Promissory Note is not necessary. See Borough *v.* Perkins, 1 Salk., 131; Story, 275, c. 281; Chitty on Bills, 224.

Code de Commerce, Arts. 173 and 175, provides that two notaries, or one notary and two witnesses (see, however, Décret, 23 Mars, 1848), shall be present.

The *Belgian* Law, 64 (20th May, 1875), the *Italian* Code (259), *Portuguese* Code (402), and *Spanish* Code (513) all contain somewhat similar provisions to those of the German Code and the Code de Commerce.

SECTION 88.—*Form of protest; rules to be observed in making protest.*

German Code.—Art. 88. Every protest must contain:—

(1.) A verbatim transcript of the Bill of Exchange, or of a copy of the same, and of all indorsements and remarks appearing thereon;

(2.) The name of the firm or the persons for whose account and against whom protest is made;

(3.) The demand made upon the person against whom protest is made; his reply, or other remarks—such that this person gave no answer, or was not to be found;

(4.) The name of the place, the day of the month, the month and year, on which the demand was made (No. 3), and whether such was without result;

(5.) In the case of acceptance or payment for honour, by whom and for whose account and in what name such payment has been made or offered to be made;

(6.) The signature of the notary or officer of the court making the protest, to which must be added the seal of his office or that of the court.

English Law.—A protest must contain a copy of the Bill, stating where demand for acceptance or for payment has been made; the reasons, if any, assigned for refusal; the name of the person for whose account, or at whose request, protest is made; the date of demand. A protest of a foreign Bill should be made on the day of dishonour or refusal to accept. The 2 & 3 Will. 4, c. 98, enacts that a Bill made payable by the drawer at a place other than the drawer's residence, and which Bill shall not be accepted on presentment, shall be, without further presentment, protested for non-payment at the place where it has been made payable.

The formalities required by the English law on making protest do not differ materially from those required by the

German Code. As to what is needed, see Byles, ch. xix., of *Protest and Noting.*

Code de Commerce (173, 174) requires one notary and two witnesses, or two notaries). Italian Code (259) concurs; so also the Spanish Code, 513. The Belgian Law, 64 (20 May, 1872), directs one notary and an *huissier* to be present.

SECTION 89.—*Rule, where there are several parties to a Bill of Exchange, as to making one or more protests.*

German Code.—Art. 89. When the performance of any matter in regard to a Bill of Exchange shall be demanded from several persons, only one protest shall be needed in respect of such request or demand.

English Law.—The same rules apply. Protest for non-payment or non-acceptance is only needed as against the immediate parties. Notice suffices to charge all other parties; see Brookes' Treatise on the office of a notary of England, 3rd Ed., by Leone Levi (1867), which gives (p. 207) the usual words employed by a notary, viz., "I do protest against the drawer of the said Bill, and all other parties thereto, and all others concerned."

Code de Commerce: Des Protêts, Art. 173 *et suiv.*—A protest, once made operates against all parties to a Bill.

The *Italian Code* (259), *Spanish Code* (513), *Belgian Law,* 64, 65 (May, 1872), agree with the Code de Commerce and the German Code.

SECTION 90.—*Duties of a notary or officer of a Court, and rules to be observed by him.*

German Code.—Art. 90. All notaries and the officers of a court are obliged to enter the protest in its entirety, and

order of the date and day in a register kept for that purpose, which must contain consecutive numbers from folio to folio.

English Law.—A notary, *registrarius, actuarius,* is a public officer, appointed by the Archbishop of Canterbury. The 41 Geo. 3, c. 79, & 6 & 7 Vict. c. 90 regulate the duties of his office. He is bound to keep a proper register, and enter the minutes of all Acts made by him in their order of date. The practice is to number the protests in their consecutive order; Brookes, Notary of England, edited by L. Levi, p. 154, 3 Burns' Ecclesiastical Law.

The Code de Commerce (§ XII., Des Protêts, Art. 173, 174) and the *Belgian* Code (173) concur with the German Law. A notary or officer of the court is bound to enter protest in the order and date received by him. The Italian, Spanish and Portuguese Codes and practice agree in almost every respect with the French Law.

CHAPTER XVI.

PRESENTATION FOR PAYMENT.

SECTION 91.—*Time and place for presentation of a Bill of Exchange.*

German Code.—Art. 91. The presentment for acceptance or payment, the making of protest, the demand for delivery of a duplicate of a Bill of Exchange, including all other acts to be done as against any of the parties concerned, must be made and done at the business place of such person; and in case he has no business address, then at his residence; failing these, at some other place,—for instance, the public Exchange; in this instance, however, mutual consent is necessary. The fact that the place of business or residence of a party cannot be discovered shall not be taken to be conclusive until proper search has been made by a notary or by some officer of the police, and evidence given that such search has proved fruitless; reference to this fact must be made in the protest.

English Law.—Presentment for acceptance or payment need not be made on the person himself; it must be made at the drawee's usual place of business or at his residence. The same rule applies to the making of a protest. No search as to place of residence need be averred when the party named on the Bill has removed from the place named on the instrument itself; Byles, 204. Bankruptcy, insolvency, do not excuse from presenting a Bill or Promissory Note for payment; Esdaile *v.* Souerby, 11 East., 114;

Chitty on Bills, ch. vii., "Of Presentment," p. 191. Story, ss. 235-7, says, "The true rule is, that the presentment of a Bill must be made at the place of the domicile of the drawee;" and in this he concurs with Chitty.

Code de Commerce, Art. 161, requires demand or presentment for payment at maturity.

The Italian Code, 247, Spanish Code, 487, and in fact all the Continental Codes agree with the English and German Law in this respect, and require that the business domicile, and, failing this, the residence, of the party be visited, and demand made for payment there.

SECTION 92.—*Where the due date of a Bill falls on a Sunday or public holiday; rules to be observed.*

German Code, Art. 92.—Where a Bill of Exchange falls due on a Sunday or on a general holiday, the Bill shall be deemed to be payable on the following working-day. The demand of a duplicate of a Bill, all declarations as to acceptance, and every other act, can only be made or performed on a working-day. Where the performance of any of the above-named acts falls upon a Sunday or on a general holiday, the act or thing to be done must be demanded or done on the next following working-day. The same rule applies to protests.

English Law.—The Acts regulating the reckoning of Sundays, Christmas-day, Good Friday, and public fast-days are the 39 & 40 Geo. III., c. 42, the 7 & 8 Geo. IV., c. 15, and the 34 Vict., c. 17, which regulates bank holidays. Where there are no days of grace, or where the last day of grace expires on such a day, the Bill is deemed to become due the preceding day.

The *Code de Commerce*, Art. 134 (Loi II., tit. 8): the due

date is on the preceding day—*la veille.* The *Belgian* Code (l. 24, 1872), *Italian* Code (219) and *Spanish* Code (440) concur. In Scotland, if due on a Christmas-day or Good Friday, payment can only be demanded the day after.

SECTION 93.—*Rules to be observed in determining the due date of a Bill of Exchange.*

German Code.—Art. 93. Where a common settlement or pay day is the custom of the place where a Bill of Exchange is made payable, its due date is reckoned to be the next ensuing pay-day, provided the Bill is not drawn at sight. The time allowed for making protest, according to Art. 41, for non-payment must, however, not be exceeded.

English Law.—The 93rd Art. of the German Code has nothing analogous in the English law: a usance most nearly resembles a common settlement-day. Chitty thinks that usances, where they vary, would not be noticed by a court. Story, ss. 332, 333, gives the various usances in different countries in a foot-note to pp. 421, 422 (third edition). It might be a matter of evidence, in regard to due date, whether a Bill having no date stated, which could be ascertained on the face of the instrument, is not irregular. See Byles on Irregular or Informal Bills, 442.

Code de Commerce.—Art. 132. Usance means thirty days from the day after the date of a Bill. The same rule prevails in Italy (Code, 218), Spain (Code, 441), and by the Belgian Law, 22 (23 May, 1872).

CHAPTER XVII.

SIGNATURES TO A BILL.

SECTION 94.—*Imperfect signatures; rule as to signing a Bill of Exchange by a mark or in pencil.*

German Code.—Art. 94.—Declarations in regard to a Bill of Exchange made by marks or signs, instead of writing, do not partake of the character of a contract on a Bill of Exchange unless they have been notarially or judicially attested.

English Law.—This rule does not apply. A Bill or Promissory Note may be signed, made, or indorsed with or by means of a mark or sign. The proof of marking may be given by a person who has seen a party execute other instruments, and is enabled to point out some distinguishing feature in the mark or sign; George *v.* Surrey, M. & M., 516; Byles, 149; Story, s. 225, by initials and marks, when good.

Code de Commerce.—Art. 122: De l'Acceptation. Nougier (No. 88) says, "Une croix apposée par les souscripteurs ne vaut pas la signature." It is also doubtful whether a name written in pencil holds good.

The *Spanish* Code, 461, is very rigorous, and requires the words "*I accept,*" or "*we accept,*" to appear on the face of a Bill. The *Italian* Code, 209, conforms with the Code de Commerce. The *Belgian* Law, 12 (May, 1872), requires that the word "*accepted*" be written on the Bill itself.

SECTION 95.—*Liability of an Agent who signs any declaratory act regarding a Bill of Exchange in excess of his authority.*

German Code.—Art. 95. A person who subscribes any Bill of Exchange or declaratory act as the attorney of a third person, but without his authority, becomes personally liable to the same extent that the person whose authority has been wrongfully assumed would have become liable. The same rule applies to guardians and other representatives who, in excess of their authority, subscribe any declaratory acts in relation to a Bill of Exchange or PromissoryNote.

English Law.—An agent becomes personally liable on his signature as drawer, acceptor, indorser, or guarantor, or in respect of any writing signed by him, unless he signs in his principal's name only, or expressly states his agency; Leadbitter *v.* Farrow, 5 M. & S., 345.

In the cases of Lewis *v.* Nicholson, 18 Q. B., 509, and Collen *v.* Wright, 26 L. J., Q. B., 147, the ordinary rule was applied of excess of use of authority, the court holding the agent liable; Alexander *v.* Tizer, L. R., 4 Ex., 105, in the case of the agent; and his executors were held liable in an action *ex contractu*, that is, on the instrument itself; see also Byles, 36.

Writing another man's name, even without fraudulent intent, renders the party so signing liable (by adding the words "*sans recours*," an agent may, however, escape such liability); Holloway *v.* Russell, 32 L. J., Ex. Ch., 297. The party so liable cannot be sued as an acceptor; only one acceptor being allowed to a Bill. An infant may sign, so as to pass property, but not to render him liable; Smith *v.* Johnson, 27 L. J., Exch., 363.

On this subject see Story on Bills, s. 76; Bayley on Bills, c. 2, s. 7, pp. 70, 71.

Code de Commerce.—Art. 122. The law of France concurs with that of England and Germany. The limits of authority, more especially in the case of a Bill of Exchange, must be rigorously observed.

The Codes of Italy and Spain concur with the Code de Commerce.

CHAPTER XVIII.

OF PROMISSORY NOTES.

SECTION 96—*The form and essential requisites of a Promissory Note.*

German Code.—Art. 96. The essential requisites of a Promissory Note are—

(1.) The mention of the word "Bill" (Wechsel) on the note itself; or, if the Note is in a foreign language, some equivalent expression.
(2.) The mention of the amount of money to be paid.
(3.) The name of the person or firm to whom or to whose order payment is to be made by the maker of the Note.
(4.) The indication of the time within which payment has to be made.
(5.) The signature of the maker, or that of his firm.
(6.) The mention of the place, the day of the month and year where and when the Note was made.

English Law.—A Note of hand or Promissory Note is an absolute promise to pay a certain sum of money at a date named on the instrument; Story on Promissory Notes, s. 1, 12, 13, 57; Storm *v.* Stirling, 3 E. & B., 842. It may be a joint or several note; King *v.* Hoare, 13 M. & W., 505; Brinsmead *v.* Harrison, L. R., 6 C. P., 584. By the 3 & 4 Anne, c. 9, a Note of hand is made transferable; which, prior to the passing of that Act, it was not at common law. This Act includes foreign Promissory

Notes; Milne *v.* Graham, 1 B. & C., 192; De la Chaumette *v.* The Bank of England, 9 B. & C., 208. No precise form is necessary to constitute a Promissory Note: the same rule applies to Bills of Exchange; Reynolds *v.* Peto, 9 Ex., 410; Story on Promissory Notes, s. 14, as to defective form; Chitty, pp. 88, 89.

A Promissory Note may be payable in instalments, and yet within the statute; it may be joint or several. No precise form is needed: it may be the maker's own order; Gay *v.* Lander, 17 L. J., C. P., 286.

The somewhat rigorous rules as to the form required by the German Code do not apply.

Code de Commerce, sect. 2: Du Billet à ordre. Arts. 187 and 188 place a Promissory Note on the same footing, without prejudice to Arts. 636—638 of the C. C., as a Bill of Exchange; and in this respect nearly all the Continental Codes agree with the C. de Comm. *Belgian* Law, 20 (May, 1872). *Italian* Code, 274. *Spanish* Code, 558 (this latter Code requires pursuit of legal remedy against the maker and indorsers within two months from date of protest).

SECTION 97.—*Place of payment where none stated on a Promissory Note.*

German Code.—Art. 97. Where the place of payment is not mentioned, the place at which a Note is issued shall be deemed to be the place of payment; likewise, the domicile of the maker of the Note.

English Law.—The 1 & 2 Geo. 4, c. 78, remedied the doubt as to where a Bill of Exchange should be deemed payable. Unless expressed to be payable at a particular place "*only*," "not *otherwise*" or "*elsewhere*," a Bill is deemed to be a general acceptance or promise to pay, and payable generally,

even though the Bill be made payable at a particular place by the drawer or maker, by omitting these express words; Selly *v.* Eden, 3 Bing., 611. Even presentment at the house of a banker need not be averred; Byles, 214. The statute does not, however, comprise Promissory Notes payable at a banker's or other specified place. Presentment at a place so indicated is hence indispensable; see the case of Van der Donkt *v.* Thelluson, 8 C. B., 812; Story on Promissory Notes, s. 227. The Anerican Law does not concur in this view, but follows the rule regarding Bills of Exchange; Wallace *v.* McConnell, 13 Peters, 136. As regards Bank Notes, they need not be presented within a reasonable time, but are deemed to be never over due; they are intended to circulate; ch. 12, p. 554, Chitty on Bills; Story on Promissory Notes, s. 500; but see the case of Mohawk Bank *v.* Broderick, 10 Wend., 30. In these cases it was held that, to keep alive the right of a holder, a Bank Note must be presented the day after receipt; Camidge *v.* Allenby, 6 B. & C., 373.

Code de Commerce, 187: Du Billet à ordre.—All the rules which regulate the place of payment of a Bill of Exchange are in force as regards a Promissory Note. The *Belgian* Law 83 (May, 1872), *Italian* Code, 274 *Spanish* Code, 558, agree with the French Law.

SECTION 98.—*Exceptions to the rule that the laws regarding a Bill of Exchange also apply to a Promissory Note.*

German Code, Art. 98.—The following rules, which apply to a Bill of Exchange, likewise apply to a Promissory Note to order.

(1.) In regard to the form of the instrument, Arts. 5 and 7 are in force.

(2.) As to indorsement, Arts. 9 to 17.

(3.) In regard to presentation of a Note at a given number of days at sight, Arts. 19 & 20 apply; save where the presentation is to be made to the maker of a Note himself.

(4.) Respecting recourse for security (Art. 29), this cannot be demanded, except where such may be required in the case of the insolvency of the maker of the Note.

(5.) Arts. 30—40 apply in regard to payment, and the right of deposit of the amount due on the Bill, together with the proviso that the same may be made by the maker of a Note.

(6.) As to recourse in case of default of payment against the indorsers, Arts. 41, 42, 45 and 55 are in force.

(7.) Arts. 62 to 65 apply as regards payment for honour.

(8.) Arts. 70 to 72, as regards copies.

(9.) Arts. 73 to 76, as regards a lost or forged Note, save in the case provided for by Art. 73; the payment must be made by the maker of a Note.

(10.) Arts. 78-96, as regards the general principles —that is, as to prescription—apply; the time of limitation of action against the indorsers, the period within which legal proceedings must be commenced by a creditor. As regards foreign legislation, the protest, the place and time of presentation, and other regulations respecting Bills of Exchange, including defective signature, Arts. 78 to 96 apply.

English Law.—As regards Promissory Notes, they partake of all the essential characteristics of a Bill of Exchange,

and may, as named, be in almost any form: they may be special, to bearer, or to order; but, if under seal, the Note is not deemed negotiable; *Re* Natal Investment Company, 3 Cham. Appeals, 355. It is very questionable whether a Promissory Note may be made in parts or sets; Story on Promissory Notes, s. 4; Byles, p. 5. The distinction between a Bill of Exchange and a Promissory Note is shown by the instrument itself: to the latter there are only two parties, the maker and payee; the maker is the person primarily liable. If a Note be negotiable, the resemblance is all but complete; Story on Promissory Notes, s. 397, 380.

Code de Commerce, Art. 187: Du Billet à ordre.—The Belgian Law (Mai, 1872) concurs with the French Code; so also the *Spanish* Code, 558, and the *Italian* Code, 274: save in case of the Spanish Code, as named, the holder has to pursue his remedy within two months against the makers and indorsers.

SECTION 99.—*Place where a Promissory Note must be presented for payment.*

German Code.—Art. 99. A Note drawn payable at a given address must be presented for payment, or protest made against the party named on the Bill itself, or at his address; and where no address is given or ascertainable, the same must be presented at the place at which the Bill or Note is dated. Where protest within the time prescribed is not made as against the party whose name is mentioned, the right of recourse against subsequent indorsers becomes forfeited. In the case of a Promissory Note which does not contain an address, neither presentation nor protest, at due date, is necessary.

English Law.—The 1 & 2 Geo. 4, c. 78, as named, does not apply; see cases cited, section 97.

Code de Commerce, 187 *et seq.*—The *Belgian* Law does not require that the "valeur fourni" be stated; see L. Oudin, Manuel de Droit commercial français et étranger, p. 662. The Italian Code, 274, Spanish Code, 558, concur, with the French Law, save that they require that legal steps must be taken against the maker and other parties within two months from the date of protest.

SECTION 100.—*Prescription; limitation of action.*

German Code.—Art. 100. The liability on a Promissory Note, as against the maker, is barred within three years, reckoning from the due date of the Note.

English Law.—The remedy on a Promissory Note is barred in six years from due date (Byles, 345), if on demand it appears that the time of limitation of a Promissory Note, unless accompanied by some writing limiting or postponing the right of action, runs from the date of the instrument, and not from the time of demand; Christie *v.* Fonsick, Sel. N. P., 9th Ed., 351. Even where a Note on demand is lodged as security this rule applies; Garden *v.* Bruce, 37 L. J., Ex., 112. Baron Martin, however, in his judgment, expressed a doubt on this point.

Code de Commerce, 189: *De la Prescription.*—The time of limitation is five years; Belgian Code 82 (May, 1872), Italian Code (282), Spanish Code (557), four years.

SECTION 101.—*Cheques, their legal character and requisites as to Form.*

German Code.—Art. 301 deals with the question of mandates, or directions to pay a sum of money. These instruments partake essentially of the character of a cheque. In German banking the employment of this

useful instrument is not common. A cheque, as known in England or the United States of America, is only in use at Frankfort-on-Main and in Saxony.

English Law.—A cheque on a banker is, in fact, an inland Bill payable to bearer on demand, and is subject to the rules (generally) regulating the rights and liabilities of parties to a Bill of Exchange. Presentment, like a sight Bill, must be made within a reasonable time, usually the day after; Pucklington *v.* Sylvester, Chitty, 9th Ed., 385. As a cheque is within the Bills of Exchange Act, 18 & 19 Vict., c. 67, proceedings on a dishonoured cheque are the same as on a Bill of Exchange. The peculiar feature of a cheque is, that its negotiability may be restricted by crossing it to a Banking Company, which limits the right of demanding payment to a banker only. The 39 & 40 Vict., c. 81,—which in part repeals the former statutes, the 19 & 20 Vict., c. 25, and the 21 & 22 Vict., c. 79,—provides for the crossing of a cheque, and the adding of the words, "Not negotiable." Formerly the law was very rigorous in preventing the issue of cheques, and held such was illegal, unless on a banker, and drawn at a distance from the place of payment of not less than 15 miles; but this rule has been altered by the 21 & 22 Vict., c. 20, s. 1. A banker is bound, if he has funds in hand, to pay the cheque of his customer; Marzetti *v.* Williams, 1 B. & Ad., 415. A banker is not bound to verify the indorsement of a cheque to bearer (16 & 17 Vict., c. 59, s. 19), as would be his duty in the case of a Bill of Exchange. The altering of a cheque, and changing the crossing on a cheque, are deemed felony. It has been held not to be illegal to post-date a cheque; the court will not notice the fact; Chitty on Bills, chap. xxi. (Cheques), p. 353; Byles, p. 17; Bull *v.* Sullivan, L. R., 6 Q. B., 209. And even where a cheque is to bearer, this rule has been upheld; Anstiss *v.* Bunyard, 34 L. J., Q. B., 217.

Code de Commerce.—The Loi of 24th June, 1865, and that of 19th February, 1874, regulate the legal position of a "cheque." All the regulations regarding a "lettre de change" (Loi, 20th May, 1872) apply to cheques; in fact, the rights of a drawer, those of an indorser, of a person intervening for honour, the duty to protest, are identical with those of parties to a Bill of Exchange. Payment has to be demanded within five days from the date of a cheque; the omission to date a cheque, or post-dating it, renders the party guilty liable to a penalty of 6 per cent. on its nominal amount (Art. 5).

The stamp on a cheque, if payable in the place where drawn, is 10 centimes; if drawn on another place, 20 centimes. A cheque can only be made payable on demand: funds are presumed in the hands of the banker. A cheque on a banker in a foreign country requires an adhesive stamp.

The *Belgian Law* of the 30th June, 1875, agrees with the French Law, save that presentation must be made within three or six days, as the case may be. This law applies to other directions or mandates for money payments; the penalties are 10 per cent., in lieu of 6 per cent., for misdating or non-dating a cheque.

In Italy and Spain cheques are not in use.

CHAPTER XIX.

MANDATES, BILLS OF LADING, DELIVERY NOTES, AND OTHER NEGOTIABLE COMMERCIAL DOCUMENTS WHICH PASS BY DELIVERY OR INDORSEMENT.

SECTION 102.—*Mandates, letters of advice, letters of credit.*

*German Code.**—Art. 300. A merchant who has accepted a mandate or advice (assignation), as against the person in whose favour such has been made, is liable for the performance of the agreement he has entered into. An acceptance of an assignment by an instrument in writing is equivalent to a promise to pay or perform.

English Law.—A letter of credit is described as a circulating negotiable writing, partaking of the nature of a guarantee; it must be addressed to a given person, requesting him to make advances to the person named in the letter. The person issuing such letter is bound to fulfil his engagement; Story on Prom. Notes, s. 482 Byles, p. 98; Story on Bills, s. 456. Such letter may be special or general; Marius on Bills, pp. 36, 37. This instrument is, in fact, a mandate or direction to a correspondent to furnish money or goods, or to discount drafts, usually unsigned drafts (counter Notes) accompanying the letter of credit. The Common Law does not recognise a general letter of credit, addressed to the world at large, for want of privity, though a Court of Equity will mend the defect; Agra & Masterman Bank *v.* Asiatic Bank Corporation, 36 L. J., R. Ch., 222. A letter of credit, to be used in England, requires a penny stamp.

* General Commercial Code of Germany.

A written acceptance by the mandatee to pay the sum named in the letter binds him to the performance of the contract contained in the mandate or letter of credit. The greatest difficulty, however, exists regarding these instruments where they are addressed to unknown third persons, that is, to the world at large; Smith's Mercantile Law, 9th Ed., p. 460, "Guaranties;" Orr *v.* Union Bank of Scotland, 1 Macq.; Chitty, Letters of Credit, p. 365; H. of L. Cases, 513.

The *French Law* recognises "lettres de crédit," "mandats," as distinguished from the *aval;* Art. 142, *Code de Commerce.* Directions to give credit, to pay money, or supply goods (*le billet en marchandises*) to the extent stated on the instrument may be to order, and, as they do not partake of the nature of a Bill of Exchange, are barred in thirty years (not, as in the former case, in five years): a letter of credit or a mandate may be accepted by the person to whom it is addressed. Nougier (Nos. 1579, 1581) says, "Une lettre de crédit est un mandat commercial."

The *Spanish Code* (Arts. 559, 560, 567, 569, 570, & 672) deals with these instruments: a mandate must not be made to bearer. The Portuguese Code (427 & 442), agreeing with the Spanish law, distinguishes four kinds of mandates, viz., *la lettre domiciliée, le mandat sur banquier, la lettre de place, la lettre de crédit.*

The *Italian Code* agrees with the French Law. Nougier, Nos. 1519 to 1581, says these instrument are much in use in the two Kingdoms of the Sicilies.

SECTION 103.—*Letters of advice for money payments; delivery of goods.*

German Code.—Art. 301. Letters of advice and obligatory undertakings which have been emitted by traders in regard to money payments, or the delivery of a

given quantity of fungible goods, or a class of securities, without specifying that such performance is dependent upon a contra-performance, may be transferred by indorsement where letters or directions are made to order. For the validity of the document, or of its indorsement, it is not necessary that the consideration, or an acknowledgment of value, should be stated on the instrument itself. The person who has accepted such letter of advice becomes liable to the person in whose favour it has been granted, or to whom it has been indorsed.

English Law.—The German Law distinctly clothes a general letter of credit, if to order, with a negotiable character. The English Common Law differs. In the case of the Agra and Masterman Bank, above cited, the Courts of Equity, however, intervened; the Lords Justices reversing the decision of V.-C. Wood, holding that the purchaser of the Bills drawn upon the faith and under the credit of such letter had a clear right to recover the amount free from any cross claims of the defendant; see Denton *v.* The Great Northern Railway Company, 25 L. J., Rep. (N. S.), Q. B., 129, and Warlow *v.* Harrison, 28 L. J. R. (N. S.), Q. B., 18, as to the possibility of a contract, though no persons are named. In the case of Russell *v.* Wiggin, 2 Story R., 203, all the points were raised as to want of privity between plaintiffs and defendants, the court pronouncing in favour of the plaintiffs.

Code de Commerce.—See Section 102, and the explanation given under that section.

SECTION 104.—*Bills of Lading, Shippers' Notes, Delivery Orders for Goods.*

German Code.—Art. 302. A Bill of Lading of a shipper, Lading Notes, Delivery Orders of goods or of movable

property warehoused in Government or licensed stores, as also Bottomry Bonds and Sea Policies, may be transferred by indorsement, if the instrument itself is made to order.

English Law.—A Bill of Lading is usually made out in the name of a person or his assigns, and passes by indorsement to his transferee; where even the word "assigns" has been omitted, this is the rule, provided it can be shown, *aliunde*, that such assignment is good by custom-merchant. See the case of Renteria *v.* Ruding, M. & M., 511. Abbott on Shipping, 11th ed., pp. 279, 293. In a Bill of Lading to *AB.*, or to *AB.* or his order, the goods were held to pass by indorsement; Haille *v.* Smith, 1 Bos. & Pal., 513; see the case of Henderson *v.* Comptoir d'Escompte de Paris, L. R., 5 P. C., 253; Sir Robt. Collier's Judgment, pp. 259, 260, in which the question of the negotiability of a Bill of Lading, where the words "*to order*" or "assigns" had been omitted, was discussed. No doubt can be entertained that the view taken by the court (the case went off on another point), that the negotiability of this instrument depended on these words, is correct; Madger *v.* Comptoir d'Escompte de Paris, Law Rep., 2 P. C., 393, and Wilson *v.* Hart, Law Rep., 1 Ch., 463.

A Lading Note, usually given by the mate of a vessel, is not negotiable; it is nevertheless binding on the owner; Falk *v.* Fletcher, 18 C. B. (N. S.), 403; Maclachland, Law of Shipping, 367.

Dock Warrants are deemed transferable, if endorsed *bonâ fide* for valuable consideration, similarly to a Bill of Lading; Selwyn's N. P., p. 1240, 13th ed.; Zwinger *v.* Samuda, Holt N. P. Cases, 395; John Houston, Stoppage *in Transitu*, p. 184; the case of Spear *v.* Travers, 4 Camp., 251. Indorsement and delivery of warrant suffice, even without notice to the Dock Company; Lucas *v.* Dorien, 7 Taunt., 278. In Harman *v.* Anderson, 2 Camp., p. 244,

mere notice was held by Lord Ellenborough to pass the property. A delivery order for goods is, however, not negotiable like a dock warrant; Dixon *v.* Bovill; McEwan *v.* Smith, 2 H. L. Cas., 309.

It will be observed that the rule, as embodied in the above Art. 302 of the German Code, grants to delivery orders of goods stored in a licensed warehouse a far wider negotiability than given by the law of England to dock warrants.

A policy of marine insurance may now be assigned by indorsement; 31 & 32 Vict., c. 86, s. 2, and 36 & 37 Vict., c. 66, s. 25; also see the case of Lloyd *v.* Fleming, 1 L. R., Q. B., 299; Smith's Mercantile Law, 9th ed., p. 342.

A *Bottomry Bond* need not be in any particular form; The "Nelson Brown," 1 Hagg. Ad. Rep., 167. The contract, being essentially the securing of a *chose in action*, it was not negotiable, and, until the Judicature Act (1875, ss. 25, 26), was deemed unassignable at law, though even formerly recognised both in the Equity and Admiralty Courts; The "Rebecca;" Maddick, 5 C. Rob. Ad., 102. It will be observed that the rule, as laid down in Art. 302 of the German Law, namely, that mere indorsement, if made to order, shall pass a bond, does not apply in the English Law.

The *Code de Commerce*, Art. 313, concurs with the German Law. The difficulty arising out of the rule as observed in England is that equities attach, even where transfer, assignment, has been made without notice to a *bonâ fide* holder; Maclachland on Merchant Shipping, 2nd ed., p. 55; Abbott on Merchant Ships, 11th ed., p. 128. As to the question of availability of set-off, see the case of Marshall *v.* Wilson, tried at Guildhall, 1811, before Lord Ellenborough.

A deed or bond known as a *Respondentia Bond*, which

mortgage charges the cargo, is similar in all respects to a Bottomry Bond; the rules as to negotiability affecting the latter apply to the former.

SECTION 105.—*Letters of Credit; indorsement of Mandates, Bills of Lading, Delivery Orders, &c.*

German Code, Art. 303.—By virtue of such indorsement all rights pass to the indorsee, as named in the preceding Article. The person liable can only avail himself of such defences as arise out of the document itself, or which he can set up as between himself and the plaintiff.

The person liable is only obliged to fulfil his engagement upon delivery to him of the receipted document upon which the claim is founded.

English Law.—No doubt that where, either by custom or by statute, an instrument becomes negotiable and passes by delivery or indorsement, the 87th Section of the 17 & 18 Vict., c. 125, applies; King *v.* Zimmermann, L. R., 6 C. P., 466; and that, where an indemnity is tendered, the loss of such negotiable instrument shall not prevent a claim for payment.

SECTION 106.—*Instruments which may be indorsed or assigned; legal effects of assignment.*

German Code, Art. 304.—Whether other documents to order, or other undertakings, may, according to the provisions of Art. 303, be transferred by endorsement must be determined in accordance with the general law of the land.

English Law.—Before the passing of the Judicature Act, but few instruments were assignable. The 25th Sect. of this Act is most comprehensive. Under it almost every right, save that in land or by succession, may be

assigned. But it is conceived that assignment, even to a *bonâ fide* holder for value, does not set aside equities, and that the transfer does not partake of the nature of transfer of a negotiable instrument proper, free of cross demands.

SECTION 107.—*Form of indorsement, legal effect of, and its analogous nature to that on a Bill of Exchange.*

German Code.—Art. 305. In all documents which are to order and pass by indorsement (Arts. 301, 304) the rules in regard to the form of the indorsement, and those respecting the identity of the holder and his legitimation, and as regards his liability, are the same as those contained in Arts. 11 to 13 and Arts. 36 and 74. Of the general German Law of Bills of Exchange, where the documents referred to in the 301st Art. have been lost, the regulations regarding amortization contained in Art. 73 of the German Law on Bills of Exchange apply. The amortization of documents mentioned in Art. 302 follows the law of the land.

English Law.—The questions dealt with under this section have been treated of under Sections 11, 12, 13, 36 and 74, the rule of amortization in the event of lost Bill applying to these instruments according to the German Law: but no analogous rule is known to the English Law; in fact, amortization is unknown in our legal system.

The form and wording of an indorsement on instruments not being Bills of Exchange is regulated by the character of the document. In many cases transfer can only be made by deed; where it is shown that they are intended to be negotiable, they pass as a Promissory Note, provided the stamp covers.

APPENDIX.

The members of the International Commission appointed at the Hague Conference of the Association for the Reform and Codification of the Laws of Nations, September, 1876, were—

AUSTRIA	Dr. JAQUES, Vienna.
BELGIUM	M. GUILLERY, Brussels.
DENMARK	Professor HINDENBURG, Copenhagen.
FRANCE	M. DE FOLLEVILLE, Douai.
GERMANY	Dr. BORCHARDT, Berlin.
GREAT BRITAIN (ENGLAND)	Sir TRAVERS TWISS, London, *Chairman.*
ITALY	Signor VIDARI, Padua.
NETHERLANDS	M. HOVY, Amsterdam.
SWEDEN	Dr. BJÖRCK, Gottenburg.
NORWAY	Professor AUBERT, Christiania
UNITED STATES	Chancellor PRUYN, Albany.

H. D. JENCKEN, J. RAND BAILEY, } *Honorary Secretaries.*

The resolutions recommended by the Commission, and adopted by the Bremen Conference, September, 1876, were as follows :—

1. The capacity to contract by means of a Bill of Exchange

shall be governed by the capacity to enter into an obligation generally.

2. To constitute a Bill of Exchange it shall be necessary to insert on the face of the instrument the words "Bill of Exchange," or their equivalent.

3. It shall not be obligatory to insert on the face of the instrument or in any indorsement the words "value received," nor to state the consideration.

4. Usages shall be abolished.

5. A Bill of Exchange shall be deemed negotiable to order, unless restricted in express words on the face of the instrument or in an indorsement.

6. Bills of Exchange to bearer shall not be allowed.

7. The rule of law of *distantia loci* shall not apply to Bills of Exchange.

8. A Bill of Exchange shall be negotiable by blank indorsement.

9. The indorsement of an overdue Bill of Exchange which has not been duly protested for dishonour for non-payment shall convey to the indorsee a right of recourse only against the acceptor and indorser subsequent to due date. Where due protest has been made, the indorsee shall possess the rights of his indorser only against the acceptor, drawer and prior indorsers.

10. The acceptance of a Bill of Exchange must be in writing on the face of the Bill itself. The signature by the drawee of his name or that of his firm on the face of the Bill shall suffice to constitute acceptance.

11. The drawee may accept for a less sum than that for which the Bill is drawn.

12. The cancellation of a written acceptance shall be of no effect.

13. No days of grace shall be allowed.

14. The holder of Bill of Exchange shall not be bound, in seeking recourse, by the order of succession of indorsements nor by any prior election.

15. Protest or noting for protest shall be necessary to preserve the right of recourse upon a Bill of Exchange dishonoured for non-acceptance or for non-payment.

16. Default of notice of dishonour for non-acceptance or non-payment shall not entail the loss of the amount of the Bill; but the defaulting party shall be liable for any damage occasioned by such default.

17. The time within which protest must be made shall be extended in the case of *vis major* during the time of the cause of interruption, but shall not in any event exceed a short term to be fixed by the Code.

18. No annulling clause need be inserted in duplicates.

19. A simultaneous right of action on a Bill of Exchange shall be allowed against all or any one or more of the parties to the Bill.

20. In the foregoing articles the term Bill of Exchange shall include Promissory Note, where such interpretation is applicable; but "Promissory Note" shall not apply to Coupons, Bankers' Cheques and other similar instruments in those countries where such instruments are classed as Promissory Notes.

Five additional rules were adopted at the Conference at Antwerp (September 1878), namely—

21. No annulling clause need be inserted in duplicates.

22. A simultaneous right of action on a Bill of Exchange shall be allowed against all or any one or more of the parties to the Bill.

23. The surety upon the Bill (*donneur d'aval*) shall be primarily liable with the person whose surety he is.

24. The capacity of a foreigner to contract by means of a Bill of Exchange shall be governed by the law of his country; but a foreigner who enters into a contract of exchange, being incapable of binding himself by such a contract in his own country, shall be bound, if he is capable of binding himself

by such a contract under the law of the country in which he contracts.

25. In the foregoing articles the term "Bill of Exchange shall include Promissory Note, where such interpretation is applicable; but "Promissory Note" shall not apply to Coupons, Bankers' Cheques, and other similar instruments in those countries where such instruments are classed as Promissory Notes.

At the Conference held at Frankfort-on-the-Maine the following additional rules were adopted, making in all two rules:—

27. The limitation of actions upon Bills of Exchange against all the parties (acceptor, drawer, indorsers and sureties—*donneurs d'aval*) shall be eighteen months from due date.

28. The owner of a lost or destroyed accepted Bill, duly protested for want of payment, has a right, upon giving security, to payment of the Bill by the acceptor, any endorser prior to himself, or the drawer.

INDEX.

PAGE

Acceptance, admits drawer's signature 98
,, conditional 48
,, effect of bankruptcy of the acceptor 54
,, effect of 83
,, form of 47
,, for honour 79
,, for whom made 82
,, ,, duties of acceptor 80
,, legal responsibilities incurred by 49
,, limited 48
,, mode of determining duties of acceptor 81
,, presentment, consequences of default 45
,, ,, effects of 44
,, ,, for 44
,, ,, holder to establish date of 45
,, requisites of 47
special 48
,, theory of stopped 49
,, unconditional 47
,, when acceptor may cancel same 47
Acceptor for honour, his rights and liabilities 82
,, ,, ,, ... 86
,, where several parties intervene who may claim the preference 85
,, notice by 80
Acceptor, his liability 105, 108
,, legal liability 49
,, payment by 50
,, when protest or noting necessary 68
,, when obliged to pay amount of a lost Bill 96
Accommodation acceptor, his rights and liability 50
Acquisition of a lost or stolen Bill 95
Action on a Bill, defences to 107
,, interrupts period of limitations 104
Address of drawer unknown 71
,, other parties unknown 71
Agent, liability of signing without authority 121

PAGE
Alien enemies cannot contract 109
Allonge, what it is 38
Alteration of a Bill how far this vitiates it 99
Amortization, unknown to the law of England 137
Appendix, Rules regulating Bills of Exchange and Promissory Notes established by the international Commission 138
Aval, contract created by 106
,, definition of 138

B.

Bankruptcy of acceptor, effect 54
Bills of Exchange drawn at sight 57
,, ,, ,, days after sight 58
,, ,, the law regarding those drawn or accepted in a foreign country 108
,, ,, rights of holders in a foreign country.. .. 111
,, ,, the word Bill of Exchange need not be inserted in an English Bill 32
,, ,, delivery of, on payment 72
,, ,, to holder on payment 97
,, ,, distinction between Promissory Note and Bill .. 127
Bills of Lading, definition of 131
,, ,, to order, special, in blank, rules regulating indorsement of 134, 136
,, ,, transferability of 134
Blank indorsement 39
Bearer, payable to 39
Bottomry Bond, definition of.. 135
,, ,, need not be be in any particular forms 135

C.

Cancelling a Bill, right of holder to annul same 78
Capacity to contract 27, 109
,, ,, joint stock companies 27
,, ,, married women 27, 109
,, ,, minors 27, 109
,, ,, persons of unsound mind 109
Cheques, alteration on 129
,, Belgian Law, 1875 130
,, form of 128
,, ,, ... 129
,, French Law, 1874 130
,, its negotiability 129
,, legal character of 128
Christmas Day, if due on 118
Common Settlement Day 119
Computation of time 57, 59, 60
Copy, liability of indorser, transfer by means of 93
Counterpart or copy, who entitled to claim 89
,, ,, liability and duties of depositee of an original, as against the holder of 93

D.

PAGE
Date Bills 59
Date Bills, old and new style 59, 60
Date, how described 31
Drawee refusing to give date of acceptance 47
Drawer of a Bill also payee 33
,, ,, distinction between English and German Law .. 34
,, ,, his liability 34, 105, 108
Drawing from one place on another. French Law 33
Days of grace 59
Declaratory acts signed by agents 121
Defences to an action on a Bill 107
Defective Bill 33
Destruction of a Bill 72
Delivery of a Bill, obligation to, on payment 63
Delivery Order, definition of 131
Deposit into court of amount of Bill 64
Detinue action for delivery of original Bill, by holder of a counterpart or copy 94
Discharge, how effected 90
Dishonour of a Bill, consequence of 53
,, ,, right of immediate pursuit.. 73
Dock Warrant, by delivery, by indorsement 135
,, definition of 134
,, transferability of 134
Domicile of acceptor 50
Drawer, liability of.. .. .. 34, 105, 108
Due date, how regulated 58
,, if on a Sunday or holiday, rules to be observed .. 118
,, mode of determining where uncertainty prevails .. 56
,, of a Bill drawn at days after sight 57
,, rules to be observed in determining 119
Duplicates, accepting several parts 89
,, accepting only one part 90
,, circumstances under which Drawer is obliged to furnish 38, 88
,, depositee of 91
,, law regulating rights of holder of 92
,, liability of an acceptor or indorser on 89
,, rights of holder of indorsed 91
,, rule as to marking Bill as a counterpart 90

E.

Election, of holder against parties to a Bill 75
,, right of by holders 72
Essential requisites of a Bill of Exchange 30
Evidence of notice, what constitutes 71
Expenses, rights of holder for reimbursement of 77
,, right to claim statement of.. 77
,, right to recover on paying supra protest 88

PAGE

F.

Fair time, Bills drawn at 60
Fictitious signature, effect of.. 29
Foreign Bill, protest necessary 81
Foreign Bills, characteristic of 110
,, holder of, acts to be observed by, to preserve rights 111
,, mode of proceeding on 110
,, requisites of 110
Foreign country, drawing or accepting in 108, 109
Forged signature, effect of 29
Forgery 98
,, effect of on holder 97
,, effects of 99
,, fraudulent alteration 99
,, liability of drawer and indorser in case of 99
,, no rights acquired by an indorser 98
Form of a Bill 30, 31
,, ,, German-French law 32
,, ,, need not be special 34

G.

Goods, chattels, delivery of, not allowed under a Bill or Promissory Note 28
Goods, delivery of, by a letter of advice 133
Guarantor of a Bill, his liability 106
Good Friday, how it affects notice 118

H.

Holder of a Bill, his rights to sum on Bill and expenses 72
,, ,, his duty to apply to the, in case-of-need address 83
,, ,, his right to claim re-exchange 76
,, of a lost or stolen Bill acquired *bona fide* 95
Holiday, if on due date 118

I.

In case-of-need address, duty of holder to present at 79
,, ,, effect of 85
,, ,, indorser's right to insert on Bill.. .. 73
,, ,, is alternative in its character 89
,, ,, right to refuse 79
,, ,, when holder may refuse 80
Indorsee, expunging name of 61
,, position of 60
Indorser, liability of 105
Indorsement, after due date 41
,, after due with equities 42
,, blank, filling up of 39
,, blank indorsement 36
,, blank or imperfect 39
,, for collection by procuration 43
,, form of 37

PAGE
Indorsement, French law respecting 40
,, holder's right to cancel 78
,, informality of 37
,, irregular 41
,, liabilities incurred by 40
,, mode of 39
,, of commercial instruments, legal effect of, forms and requisites of 137
,, requisites of 36
,, special 43
,, special, in full 37
,, striking out of 38
,, what passes by means of 37
Informality of a Bill, when it renders it void 33
Inland Bill, by what law governed 110
Insolvency of acceptor, effect of 54
Interest payable on face of Bill 34
,, not allowed by the German Law 34
,, on protested Bill 74
Infants, contracts made by void, and exceptions 109
Intervention acceptance for honour 79
,, in case-of-need address 79
,, rule as to preference 85
Invalid signature, consequence of 28
Imperfect signature 120
Irregular Bills 119

L.

Lading Note, definition of 134
Letters of advice 131
,, for money payments 131
,, for delivery of goods 132
Letter of Credit 131
,, definition of, form and requisites of, unless to a person named, not recognised by the common law 131
,, distinguished from an Aval 132
,, general, its effect by the law on the Continent .. 133
,, indorsement of 136
Liability contracted under a Bill 28
,, of the drawer of a Bill 34
,, ,, indorsee 34
,, ,, acceptor 108
,, ,, of a person on a Bill 63
,, incurred under a Bill of Exchange 105
,, of indorser 40
,, of holder and indorser 63
,, of agent signing Bill in excess of his authority.. .. 121
Limitation of action, various periods of time, *see* "Prescription" .. 101
Loss of a Bill, consequences of 95
Lost Bill, right of recovery of amount.. 72
Lunatics cannot contract 107

M.

PAGE
Mandate, definition of 131
,, acceptance of a 132
,, indorsement of 136
Mark, signing a Bill by 32, 120
,, in pencil 32
Market Bills, how computed.. 60
Married women cannot contract—exceptions 109
Minors cannot contract—exceptions 109
Month, how computed 56

N.

New style, how computed 59
Non-acceptance 52
,, consequences of dishonour 52, 53
,, ,, of, foreign law 54
Notices, consequences of neglect in giving 70
,, evidence or proof of 71
Notice of incapacity to contract 29
,, to party for whom acceptance supra protest has been made 81
,, when parties have to give 70
,, when required 65
,, when to be given 69
,, where addresses unknown 71
Non-acceptance, holders' duty 52
Non-payment, requisites to be observed 65
Non-transferability of a Bill 36
Notary, his duties in making protest 113
,, rules to be observed by him 115
Noting, consequences of not 66
,, when deemed necessary as regards the acceptor 68
,, rights of holder to claim expenses, etc... 72
,, rights of recourse after, foreign law 73

O.

Old style 55
,, difference between new and 59
Over-due Bill, what equities attach 60

P.

Payee, how to be described 31
,, where he is also the drawer 33
Payment by holder, effect of 76
,, for honour (by intervention) 84
,, into court (foreign law) 64
,, ,, necessity of making protest 85
,, obligation to present at place of 67
,, of Bill, place of 50
,, ,, in foreign currency 61

PAGE
Payment of part, legal effect of 62
,, rights acquired by 85
,, time within which to present 84
Pencil mark on a Bill 32
Place of payment need not be stated 50
Policy of Marine Insurance, transferability of 135
Posting, evidence of 71
Prescription 101
,, period as regards the acceptors 101
,, ,, as against the drawer and antecedent parties 103
,, ,, as regards the holder 103
,, ,, of limitation, when it ceases to run 104
,, ,, ,, as regards Promissory Notes .. 128
Presentation for acceptance, mode of 44
,, duty of holder to present 45
,, for payment, time to present, condition contained in an indorsement 57
,, must not be on acceptor himself 117
,, to establish date 45
,, where to be made, and when 68, 117
,, who may present 44
Preservation of rights, necessary acts to secure.. 111
Promissory Notes. *See* sections on Bills of Exchange.
,, ,, distinction between a Bill and a Promissory Note 125
,, ,, English law 126
,, ,, exceptions to the rule that the laws regulating Bills also apply to Promissory Notes.. .. 125
,, ,, foreign 124
,, ,, limitation of action on, different periods of .. 128
,, ,, may to bearer, to order, or special 127
,, Note, form of requisites of ; legal definition of .. 123
,, ,, payment of 124
,, ,, place of payment when none stated 124
,, ,, place of presentment for payment 127
,, ,, time within which to present 125
,, ,, words "only," "not otherwise," effect of .. 125
Protest, by whom made, form of 113
,, for better security 52
,, for non-acceptance. Foreign law; English law 52
,, formalities required by the English law 114
,, must be entered on day of dishonour 67
,, rules to be observed.. 114
,, rule where there are several parties. Against immediate parties 115
Provision, French law 48

R.

Recourse as against an acceptor 74
Recourse on bill, requisites to be observed 65
,, ,, Foreign law.. 73

PAGE
Re-exchange, rights of holders to claim 66
,, circuitous, when allowed 74
,, settled by custom-merchant 74
Reimbursement of expenses, rights of holder to draw for.. .. 77
Requisites of a Bill of Exchange 30
,, ,, ,, German rule that the word "wechsel" be employed 30
Residence of drawee, when to be named 32
,, ,, when unknown 117
Respondentia Bond, definition of 135
Rights of holder of a Bill 72
Receipt, when required 63

S.

Sans recourse, effect of 40
Security, when lodged 54
,, law of foreign states requiring 83
,, where lodged, how liberated 54
Sum stated on a Bill in words and figures 32
Signatures to a Bill, imperfect, by a mark 120
Stolen Bill, consequences of 95
Sum payable under a Bill 30, 31
Supra protest, acceptor's liability 82
,, payment under 84
Statute of Limitation, effects of 103
Surety, contract by 106

T.

Time, how determined, presentment, payment 57, 59
Torn or lost Bill 97
Transfer, *see* "Indorsement" .. ..

U.

Unconditional acceptance 47
Unnegotiability, effect of 40
,, parol evidence on 41
Unsound mind, persons of, cannot contract 109
Usance, various dates of 119

V.

Valeur fournie 48
Varying a Bill, effect of 99
Void by means of informality. German law; French law .. 33

W.

Without recourse, effect of 40
Writing, a Bill must be in 30

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